



## EXTRAORDINARY

### PART II—Section 3

PUBLISHED BY AUTHORITY

**No. 68] NEW DELHI, FRIDAY, MARCH 20, 1953**

### ELECTION COMMISSION, INDIA

#### NOTIFICATION

*New Delhi, the 18th March 1953*

**S.R.O. 549.**—WHEREAS the election of Shri Ijari Sirsappa of Harpanahalli, Bellary District, as a member of the Madras Legislative Assembly from the Harpanahalli constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Arsanah Basavangoudara Reddi Katragowd of Arsanahal Village, Teligl Post, Bellary District, Madras State;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

#### BEFORE THE ELECTION TRIBUNAL, BELLARY

*Wednesday, the 25th day of February 1953.*

#### PRESENT:

Sri N. D. Krishna Rao, M.A., Bar-at-law, I.C.S.—*Chairman.*

Sri D. Rangayya, B.A., B.L.

Sri K. P. Sarvothama Rao, B.A., B.L.—*Members.*

ELECTION CASE NO. 3 OF 1952

(ELECTION PETITION NO. 55/52 BEFORE THE ELECTION COMMISSION, INDIA)

#### BETWEEN:

Arsanah Basavanagoudara Reddi Katragowd—*Petitioner.*

*Versus*

1. Ijari Sirsappa,

2. Nellakudiri Boranna Navara Mukanna,

3. Hiremathada Veerabhadraiah—*Respondents.*

This Election Case coming on for final hearing before us on Wednesday the 11th February 1953, in the presence of Sri M. Satyavantha Rao, Pleader for Petitioner and of Sri D. Venugopalachari, Advocate for the 1st Respondent neither the 2nd and 3rd Respondents nor their Vakils Sri M. S. Padmanabha Rao and

Sri K. M. Dakshinamoorthy respectively appearing, and having stood over till this day for consideration, the Court delivered the following.

#### JUDGMENT

*(The judgment of the Tribunal was delivered by Sri D. Ranganna).*

This petition is filed under Articles 324 and 329 of the Constitution of India Act and Sections 81 to 84 of the Representation of the People Act (XLIII of 1951).

2. The petition relates to the election to the Madras State Assembly from the Harpanahalli Constituency of Bellary District.

3. The petition alleges that the petitioner and the three respondents are the 4 candidates that filed their nomination papers, that respondents 2 and 3 withdrew their nominations within the prescribed time, that the petitioner and the 1st respondent contested the election, that the polling resulted in the 1st respondent getting 26,425 votes as against 25,261 votes got by the petitioner and that the 1st respondent was declared elected by the Returning Officer. It is then alleged that the election has been vitiated by a number of corrupt practices and irregularities. A number of voters are said to have been prevented from voting by the presiding officers and in one case by the polling agent of the 1st respondent, as well, and list No. I attached to the petition is given to show the particulars of the said disfranchisement, Bribery is said to have been resorted to and two lists II and II-A are furnished, one giving particulars of individual bribery and the other giving what is called group bribery. A large scale impersonation of dead voters is alleged and list III is filed giving the particulars of the persons so impersonated. Official partiality and interference are alleged and in list No. IV the details thereof are furnished. It is further alleged that the 1st respondent borrowed large sums of money from various persons for election expenses far in excess of the maximum allowed by the Act and the details of the said borrowing are furnished in list No. V. It is alleged that 1st respondent used 11 motor vans and jeeps, that the expenses therefor have not been shown in the return of election expenses and that for that reason the return of election expenses is false. Irregularities in the matter of counting by the Returning Officer are also alleged. It is further stated that the petitioner requested the Returning Officer to re-count a certain number of boxes as a test case, that the Returning Officer refused to do so and that the refusal was mala fide. The petition alleges that all these infirmities both by way of corrupt practices and irregularities have materially affected the result of the election and that the entire election as well as the election of the 1st respondent to the constituency should be declared void.

4. The 1st respondent filed a counter giving detailed replies to the several allegations and denying the several corrupt practices and irregularities alleged in the petition. The truth and the correctness of the details furnished in the lists are also denied. The alleged borrowings by the 1st respondent, the alleged user of 11 motor vehicles and the alleged falsity of the return of election expenses are also denied. It is pleaded that in several cases proper particulars are not furnished and that the petitioner cannot be allowed to enlarge his petition as suggested in paragraph 26 of the petition. The allegation that the result of the election has been materially affected by corrupt or illegal practices alleged is also denied. All the rules have been complied with by the officers concerned. The plea that there was official interference or partiality is false. The petitioner is not entitled to any relief and the petition should be dismissed with costs.

5. On a direction by the Tribunal to furnish particulars in respect of the motor vehicles, a memo of particulars was filed by the petitioner on 9th September 1952 and the 1st respondent filed an additional counter on 15th September 1952. The memo of particulars was subsequently amended in order to delete an allegation regarding the alleged conveyance of electors to and from the polling stations.

6. The 2nd respondent filed a memo saying that he has no counter to file and that he will simply watch the proceedings. The 3rd respondent did not file any counter.

7. The following are the issues framed and as amended from time to time:—

1. (a) Whether the Presiding Officers prevented voters at the polling booths specified in List No. I from exercising their franchise?
- (b) Whether the Presiding Officers refused to allow voters present at the polling stations before 5 p.m. mentioned in List No. I and thereby disfranchised a large number of voters?
2. (a) Whether the polling agent of the 1st respondent prevented the voters at polling station No. 26 from voting?
- (b) Whether he did so with the connivance or the knowledge of the 1st respondent?

3. Whether the prevention of voters at the polling booths mentioned in List No. I has materially affected the result of the Election?
4. Whether the Election has not been a free election by reason of corrupt practice of bribery having extensively prevailed at the election?
5. Whether the 1st respondent has committed the corrupt practice of bribery as mentioned in List No. 2 items Nos. 1 to 7 and List No. II-A item 1 to 4?
6. (a) Whether Reddalingappana Basava Reddi of Arsanal has committed the corrupt practice of bribery as alleged in List No. 2 item No. 8?  
 (b) Whether Reddalingappana Basava Reddi committed any such act with the connivance of the 1st respondent or his agent?  
 (c) Whether Reddi Basalingana Gowd, village munsif of Gundagathi has committed any of the corrupt practices of bribery as alleged in List No. 12 items 9 to 12 and List No. II (a) items 5 to 9?  
 (d) Whether the said Reddi Basavalinga Gowd committed such acts with the connivance of the 1st respondent?
7. (a) Whether there was improper reception of votes which are void at the polling booths of Harpanahalli specified in List No. III?  
 (b) Whether such improper reception has been committed by the 1st respondent, his agent or other agents with the connivance of the 1st respondent or his agents?  
 (c) Whether the results of the election has been materially affected by the improper reception of such votes?
8. (a) Whether there were any irregularities committed in the counting of votes as alleged in paragraphs 13 to 15?  
 (b) Did such irregularities materially affect the result of the election?
9. (a) Whether there was any irregularity in the recording of votes of Kenchikeri polling station as stated in para 16 of the petition?  
 (b) If so, if the result of the election has been materially affected by such irregularity?
10. (a) Whether the Returning Officer refused recount of the ballot paper as alleged in para 17?  
 (b) Was such refusal mala fide?  
 (c) If so, if the result of the election has been materially affected?
11. Whether there was any irregularity committed in polling station No. 9 by improper reception of parliamentary ballot papers and has the result of the election materially been affected thereby?
12. Whether the officials mentioned in paras 20, 21, 22 and 23 were guilty or any irregularity or corrupt practice and has the result of the election materially been affected thereby?
13. Whether the return of election expenses submitted by the 1st respondent is false in material particulars and has the result of the election materially been affected thereby?
14. Whether the 1st respondent has borrowed amounts mentioned in List No. V and utilised it for his election and failed to include in the list of election expenses and as such is the election void?
15. (a) Whether the 1st respondent has utilised any motor vans and jeeps mentioned in the petition for the election and has not shown the purchase price or the hire paid for the said vans?  
 (b) Has he failed to include it in his election expenses? If so is the election void?
16. Is the petitioner entitled to declaration that election is wholly void for all or any of the reasons mentioned in the petition?
17. Whether the election of the 1st respondent is void for all or any of the reasons mentioned in the petition?
18. Whether the 1st respondent has taken all reasonable precautions for preventing commission of corrupt or illegal practice at the election and any corrupt or illegal practice was committed contrary to his orders and without his sanction or connivance?
19. To what costs, if any, are each of the parties is entitled?
20. To what relief?

8. This election petition to start with presented a very huge trial in view of the several kinds of corrupt practices and irregularities alleged and also in view of the citation by the petitioner of as many as one thousand five hundred witnesses. But as the trial proceeded the petitioner gave up the alleged corrupt practice regarding the impersonation of dead voters, and a large number of witnesses that were cited on the other aspects were being given up from time to time and finally the case assumed a somewhat sizable proportions.

9. In as much as the evidence in this case is mostly oral, in order to appreciate the same a reference to the back-ground of the case as far as it has appeared in the evidence will be necessary. It is common ground that prior to the nomination papers being filed, the Congress Parliamentary Board wanted to set up a candidate on behalf of the Congress party for this constituency as also for other Assembly and Parliamentary constituencies in the Bellary district. The evidence discloses that besides the 1st respondent and some others one Angadi Chennabasappa, and Advocate of the Hospet Bar also applied for being selected as Congress candidate for this constituency. It is also common ground that Angadi Chennabasappa was recommended by the Karnataka Prantik Election Committee but ultimately on appeal the Congress Parliamentary Board did not accept that nomination and under directions from the Congress Parliamentary Board the Karnataka Prantik Election Committee finally selected the first respondent as the Congress nominee for the Harpanahalli constituency for the State-Assembly. The contention on the respondent's side is that Angadi Chennabasappa having become unsuccessful in becoming the Congress nominee has set up the petitioner to stand for election and that petitioner is to all practical purposes the nominee of Angadi Chennabasappa. It is in evidence that Angadi Chennabasappa has since been expelled from the Congress. There is a very high percentage of Lingayat population in this constituency. The petitioner's advocate at the time of arguments said that it would be about 30 per cent. Angadi Chennabasappa and the petitioner are both Lingayats. The 1st respondent's case is that both these joined and tried to exploit communal patriotism for the purpose of their success in election and having failed therein they are trying to exploit the same for the purpose of this petition. Out of the 68 witnesses examined on behalf of the petitioner it will be seen that as many as 53 witnesses belong to Lingayat community

10. During the trial and at the time of arguments, the petitioner and his advocate were often stating that the case of the 1st respondent that the petitioner was and is conducting his fight on a communal basis is not true and that the 1st respondent is a poor ryot and that he has fought the election on behalf of the ryots or kisans as against the 1st respondent who according to him represented vested interests like capital bus owners, permit holders etc. It is no doubt in evidence that the 1st respondent has got property worth 2 lakhs of rupees and it is also in evidence that some bus owners have been helping him in elections. But on that ground alone the fight between the 1st respondent and the petitioner cannot be said to be a fight between vested interests on one hand and ryots on the other. There is no material before the Tribunal to come to the conclusion that he represented any such vested interests. As already stated he was put forward by the Congress as its party candidate, and whatever interests the Congress represented 1st respondent must be deemed to have represented. There is no evidence that any ryots' association or Sangha chose the petitioner as their nominee to stand for the election.

11. One Mariswamayya (R.W. 37), was one of the persons that sought for the Congress ticket for the purpose of standing for the Harpanahalli Assembly constituency. He has deposed that the petitioner wanted to apply for the Congress ticket and that he also went to Hubli when the matter was to be discussed in the Parliamentary Board of the Karnataka Prantik Congress Committee there. The witness definitely tells us that the petitioner even filled up the application form in his presence, but he does not know why he did not file the application. The petitioner examined as P.W. 24, has admitted in his evidence that he went to Hubli in October 1951 but he would say that it was not for the purpose of filing an application for Congress ticket. He would admit that he stayed in Krishna Bhavan hotel but would say that he had no idea if Mr. Mariswami was put up in the same hotel. He would go to the extent of saying that he does not know whether Mariswami was a member of the Karnataka Prantik Congress Committee. He admits that when he went in October 1951 to Hubli, Angadi Chennabasappa was there and that it was for the purpose of filing his application before the Karnataka Prantik Congress Committee that Chennabasappa had gone there. The suggestion of the other side is that because Chennabasappa's application was recommended by the Karnataka Prantik Election Committee, the petitioner did not file his application and the petitioner himself admits that it was in about 19th November 1951 that 1st

respondent was finally selected by the Central Parliamentary Board and that the petitioner filed his nomination paper on 21st November 1951. The petitioner would say that he ceased to be a member of the Congress in 1948 or 1949 and that he was not a Congress member in October 1951. He was treated as a political sufferer on account of his taking part in the 1942 movement and in 1949 or thereabouts he was assigned some land by the Government on the ground of his being a political sufferer. When exactly after that he ceased to be a member of the Congress or when he began to represent the ryot population, there is nothing to show except his word.

12. That the communal element was predominant so far as the petitioner was concerned can be gauged from some of the questions put by the petitioner's Advocate himself to some of the witnesses. When R.W. 37 was in the box, the following question was put by the petitioner's advocate to him:—

"Did the petitioner oppose the Congress candidate because a Lingayat was not selected?"

"(It may be noticed here that the 1st respondent is a Jain). The answer of the witness is "Yes. He did it for that reason". The Advocate suggested to some of the Lingayat witnesses of the 1st respondent that because they were Sadars and not Panchachars, they were deposing for the 1st respondent. Saqars and Panchachars are different subjects among Lingayats and the petitioner is said to be Panchachars. When some Brahmins were examined on behalf of the 1st respondent, the petitioner's advocate suggested that Lingayats and Brahmins were ranged on different sides and therefore the Brahmin witnesses should not be believed. Thus even the cross-examination by the petitioner's advocate would suggest that there was communal rancour prevailing.

13. A number of persons on the respondent's side have sworn that the petitioner was carrying on his election campaign on communal lines. It is unnecessary to refer to the evidence of all of them. It is enough if reference is made to R.Ws. 37 and 38 who are both of them Lingayats and who depose that whenever they went to the villages in connection with their canvassing on behalf of the Congress candidates, they were being told by the people that they were being asked to vote for the petitioner because he was a Lingayat. As a matter of fact there is evidence to show that the communal feeling went so high that when Mariswami (R.W. 37), and some others went to a pillage called Holalu, some members of the petitioner's party threw stones in order to spoil the meeting and the meeting had to be dispersed. The petitioner's side does not dispute the fact that the meeting was dispersed but they would say that some questions were put to the speakers, that the speakers were not able to answer those questions and therefore there was confusion and that the meeting dispersed.

14. It appears to us that the contention that the 1st respondent has been representing vested interest as against ryots or kisans is put forward more for the purpose of propaganda and sensationalism rather than for any other purpose. It appears to us that for the purpose of appreciating the oral evidence adduced on behalf of the petitioner and the respondent, it may be necessary to find how far communal interests have played a part. Similarly in considering the evidence of such of the bus owners and others examined on the 1st respondent's side, it may be necessary to see whether they were giving evidence on behalf of the 1st respondent for the reason suggested on the petitioner's side. Apart from this, it appears to us unnecessary to go into the larger question as to whether the fight between the parties is as between vested interests on one side and ryots on the other. We will now deal with the several issues in the case;

**Issues 1 to 3.**—These issues relate to the alleged prevention of voters from voting. A perusal of list shows that the voters are alleged to have been so prevented at five stations Bachigondanahalli (polling station No. 9), Chirastahalli (polling station No. 54), Sogi (polling station No. 26), Ballahunsli (polling station No. 7), and Machihalli (polling station No. 49). The numbers of voters prevented in these stations are given as 300, 300, 500, 200 and 200 respectively. In the petition, paragraph 9, a general allegation is made that these 1,500 voters were deprived of their right to vote and in paragraph 23, some particular allegations are made with regard to the presiding officer at Machihalli and an agent of 1st respondent by name Hanumanna Gowd.

16. Before dealing with each of these cases, it is necessary to note that under the rules framed under the Representation of People Act, the Presiding Officer has to give slips to those present in the polling station at 5 P.M. and record only their votes after 5 P.M. and that he is not entitled to allow any other voters to vote. The question as to whether a particular voter is entitled to receive a ballot paper

after 5 P.M. or not on the ground that he was present at 5 P.M. in the polling station has to be decided by the presiding Officer and under the rules his decision is final (*Vide* rule 17). This has to be kept in mind in judging how far the action of the presiding officers in the several cases mentioned by the petitioner is correct or not.

17. *Bachigondanahalli*.—As indicated already except what is contained in list No. 1 there is no other information in the petition as regards the circumstances in which voters were prevented from voting at the station. The only information contained in list No. 1 is that the presiding Officer prevented them.

The witnesses that are examined on this part of the case by the petitioner are P.Ws. 42, 43, and 52 to 55. On the other side the 1st respondent examined R.W. 28, the Presiding Officer.

19. Except P.W. 55, who is a Kuruba by caste, all the other witnesses examined by the petitioner on this part of the case are Lingayats, and P.W. 43, is a person whose name was not mentioned in any of the several witness lists filed by the petitioner.

20. We do not think it necessary to refer to the several details spoken to by each of the witnesses P.Ws. 42, 43, and 52 to 55. Suffice it to say that the effect of their evidence is that about 400 persons were present at 5 P.M. and that these belonged to the villages of Hiresobati, Chikkesobati and Yedarmanahalli and that the Presiding Officer issued only slips to 70 persons but not the rest. It is then their case that at 7-30 P.M. they repeated their request for slips to the presiding Officer (*Vide* P.W. 42). It is their further case that the Presiding Officer stated that after the Revenue Divisional Officer comes he would take instructions from him and do as he stated, but that the Revenue Divisional Officer did not come. After the presiding officer refused to give any more slips a list was prepared of the voters disfranchised after collecting the chits which had been given by the agents of the candidates to the voters. Ex. A-3 is said to be the list prepared then and it is stated that a petition was sent to the Chief Commissioner (probably meaning Election Commissioner) enclosing therewith a copy of Ex. A-3. It is stated by P.W. 43, that a ryots Sangha was also formed after this and petitions were sent to the Collector and the District Board President Mr. Mahabaleswarappa (P.W. 64), and Exs. A-4 to A-7 are said to be the postal receipts and acknowledgments in respect of them. These are dated 7th January, 1952 and 8th January, 1952. The counting was on 4th January, 1952, and 5th January, 1952, and the result was declared immediately after the counting.

21. R.W. 28, the presiding Officer deposed that the polling commenced at 7 A.M. and it went on till 5 P.M. and after 5 P.M. he came out of the polling station and announced to the people that whoever was willing to vote can gather near the gate of the compound and then he issued chits to those who gathered. He says that roughly he might have issued 100 such slips. He is positive that he issued to all those who had gathered there and that all of them exercised their franchise which was finished by about 8-30 P.M. Then he deposed that at 8-30 P.M. some people came and asked him for slips and he refused to give them. He denies that he told anybody that Revenue Divisional Officer would come or that he would follow the instructions of the Revenue Divisional Officer. In the course of cross-examination he was asked whether he made a report that the voting was completed by 8-30 P.M. and he deposed that he must have made a report. He also deposed that he did not report about the persons asking for slips after 8-30 P.M. and that he thought that it was unnecessary.

22. The question now is whether the evidence as deposed to by P.Ws. 42, 43 and 52 to 55 can be believed. If really a petition had been sent to the Election Commissioner on the date of the polling or immediately thereafter, and if a copy of Ex. A-3 was sent along with that petition to the Election Commissioner, that would be a very strong piece of evidence, probably much better than the entire oral evidence adduced on the side of the petitioner. No steps have been taken to have any such petition produced from the office of the Election Commissioner. A list like Ex. A-3 can be prepared at any time with reference to the numbers of the persons that did not vote. Exs. A-4 to A-7 are mere postal acknowledgments and receipts. The petitions which were sent to the Collector or to the President, District Board are more relevant and useful in considering the truth or otherwise of the petitioner's case and not. Exs. A-4 to A-7 and even these are dated only 7th January, 1952, and 8th January, 1952. As the matter stands except oral testimony, there is nothing to show what exactly the petitions sent to the Collector and President of the District Board were or what recitals they contained or as to how many voters were mentioned in them as having been disfranchised. It appears to

us that the non-production of these petitions is a very grave defect in the evidence on the petitioner's side.

23. I have already shown that the oral evidence of the several witnesses is to the effect that about 400 people were prevented from voting for the reasons mentioned. Ex. A-3 contains only 138 numbers. If there was an attempt to prepare a list of disfranchised voters, one wonders why a complete list should not have been prepared and why only the numbers of 138 people should have been mentioned in it.

24. R.W. 28, is a person belonging to Chingleput district. He has been a draughtsman in the Thungabhadra Project Headworks Circle for the last 5½ years. Nothing is suggested in the course of his cross-examination to show that he had any motive to have any learnings in favour of any particular candidate. The entire case of the petitioner is on the footing that the witness neglected to do his duty because of the number of people that still remained to vote and not for any other reason. It is very doubtful whether an officer of that type would have been bold enough to adopt such a negligent attitude. After all, according to the witness himself he was there till 8 or 8-30 P.M. and if Ex. A-3 should represent the full list probably it would have taken another hour for him to finish the work. Having seen R.W. 28, in the box we find it difficult to believe that he would have for no reason whatsoever declined to give slips to all the voters that remained. It is possible that as R.W. 28, says he was asked to distribute chits to some people at 8-30 P.M. and he refused to do it. In fact the evidence of P.W. 42, itself is to the effect that at 7-30 P.M. a request was made to R.W. 28, for that purpose.

25. There is no material before the Tribunal to show whom exactly the total number of voters relating to this polling station are or as to how many voters actually voted and how many did not vote. Unless it can be said that a highly disproportionate number of voters were allotted to this polling station, it is not easy to see why there should be as many as 400 voters waiting, according to some witnesses from the morning and according to others from 12 noon, upto 5 P.M. still remaining to vote. All these matters are left in surmise and doubt.

26. Chirasthadahalli.—In list No. 1 it is stated that 300 voters were prevented and that the persons who prevented these people from voting were the presiding officer and the Tahsildar. Just as in the other case no further details are given as regards the circumstances in which these people were not allowed to vote.

27. The only witness examined in this connection on behalf of the petitioner is P.W. 25. P.W. 25, is a Lingayat and he says that he was the polling agent for the petitioner in Chirasthadahalli. He deposed that at about 4-30 P.M. the Tahsildar came to the polling station and instructed the presiding officer to stop the polling after 5 P.M. He also says that there were 300 votes to be polled yet and that they were people who would have voted for the petitioner. In the course of cross-examination he deposed that he remained till 5-30 P.M. and that nobody complained anything to the Tahsildar. He also says that nobody on behalf of the petitioner noted down the names of the persons that were so disfranchised. In the course of chief-examination he had stated that 20 to 30 out of the 300 were given chits by the village officials. In the course of cross-examination he stated that those that had been given chits by the village officials were allowed to vote but he was not bold enough to state immediately that they too did not cast their votes. The case of the petitioner as appears from one of the questions put to the Tahsildar (R.W. 34), is that the latter was under a wrong impression that voting should be closed at 5 P.M. whether or not there were voters waiting at 5 P.M. R.W. 31, the Karnam of Chirasthadahalli and identifying officer has deposed that the Tahsildar came at about 4 P.M. and asked whether everything was going on smoothly and that the presiding officer said that everything was going on smoothly and that the Tahsildar went away saying "Let everything go on in the same way" and that the Tahsildar never instructed that polling should be closed at 5 P.M. He further deposed that at 5 P.M. the presiding officer gave slips for all those who wanted to vote and that they were about 60 persons and that nobody was refused any slips. In the course of cross-examination the evidence of this witness was sought to be challenged on the ground that he is a Brahmin and that there are ill-feelings generally between Brahmins and Lingayats. This suggestion is somewhat interesting because while on one side the petitioner wants to contend that the election and the election petition are not being fought out with a communal background, and that his client is not exploiting the communal loyalty, at the same time he would suggest that on account of ill-feelings between Brahmins and Lingayats, this Karnam who is a Brahmin is giving evidence against the petitioner. One thing at least is clear that R.W. 31, is entitled to as much respect as P.W. 25, who at least can be said to be interested in the petitioner because he was the polling

agent of the petitioner. R.W. 34, admits having gone to Chirasthadahalli before 5 P.M. but denies having directed the presiding officer to stop polling at 5 P.M. From the cross-examination it appears that he passed through Chirasthadahalli once again at 5-20 P.M. He deposed that even at that time he did not instruct the presiding officer to stop the polling and that he did not meet him at all at that time. He denied that he was under any impression that polling should be stopped at 5 P.M. With regard to Machihalli, the case of the petitioner appears to be that the presiding officer wanted to continue the taking of votes even after 5 P.M. and because the Tahsildar had stated at Chirasthadahalli that voting should not go on after 5 P.M. the petitioner's people went to Chirasthadahalli and told the Tahsildar and brought him to Machihalli. The Tahsildar denies all these things. We do not find any reasons to prefer the evidence of P.W. 25, to that of R.Ws. 31 and 34. It appears to be against all probabilities. It is difficult to believe that a person of the position of the Tahsildar would not have either read the rules or would have misunderstood the rules in the way alleged.

28. *Sogi*.—With regard to this station also, there are no particulars except what is contained in list No. 1 viz., that the presiding officer and the polling agent the 1st respondent prevented the voters. The number of the voters so prevented is given as 500.

29. On this part of the case we have the evidence of P.Ws. 24, 46 to 51, and 58 to 62, on the petitioner's side and that of R.Ws. 5, 27 and 39 on the 1st respondent's side.

30. P.W. 24, is the petitioner himself. Among the other witnesses all except P.Ws. 49, 57 and 58 are Lingayats.

31. P.W. 24, states that he went to Sogi polling station at 6 P.M. and found 500 voters waiting there making a hubub and quarrelling with the presiding officer that they should be allowed to vote as they were waiting from morning 7 A.M. till 6 P.M. He further deposed that he inquired of the presiding officer and that the presiding officer stated that he had instructions to close the polling at 5 P.M. sharp and that those were the latest instructions. Thereupon he asked the people that were waiting not to press any more and that he would look to the matter afterwards and that the voters dispersed at about 7 P.M. He deposed also that the voters told him that the presiding Officer had started the polling only at 10-30 A.M. and not at 7 A.M. and that there was also undue delay in issuing ballot papers and that the presiding officer was partial to the 1st respondent and with the connivance and active co-operation of one Ijari Bharmappa (R.W. 39), the polling agent and relation of 1st respondent, actively delayed the issue of ballot papers. In the course of cross-examination it was elicited from him that till the filing of the election petition he did not send any representation to any higher authorities regarding the disfranchisement referred to in List No. 1.

32. P.W. 46, deposed that he was the polling agent of the petitioner at Sogi, that there were two polling stations, one in the ginning factory of one S. Gurubasappa and the other in the Board Elementary School, that the actual polling in the school commenced only at 10 A.M. and that too after they sent for a man by name Veerayya from Hadagalli and he remonstrated with the presiding officer. He further deposed that the presiding officer then stated that he would make up for this delay by giving extra time after 5 P.M. The witness further deposed that certain voters of Advimallanakeri village who were to vote at the ginning factory polling station and who had gone there to vote were sent from there to the polling station in the school in the afternoon and that they were allowed to vote and that the people of Sogi were pushed back. He further deposed that in spite of the promise of the presiding officer made earlier in the day he closed the voting at 5 P.M. in spite of the fact that 200 of their people remained without voting. Subsequently Veerayya and the petitioner again came and the petitioner counted the disfranchised persons and took a list and said that he would take further steps. He was questioned as to whether it was not true that the presiding officer asked both the agents at 5 P.M. and after their telling him that there were no more, he closed the poll. The witnesses denied the suggestion. With regard to the number of Advimallanakeri voters that voted in the school polling station, he deposed that they might be 50 or 60 for the whole day.

33. It will be seen from the depositions of P.Ws. 24, and 46 that there are certain important variations. P.W. 24, did not say anything about Advimallanakeri voters being the cause for a part of the delay. P.W. 46, does not say anything about the part which according to P.W. 24, Ijari Bharmappa (R.W. 39), took. P.W. 46, does not also say anything about any partiality on the part of the presiding officers. P.W. 24, did not say anything about preparing a list of disfranchised



voters at Sogi. It may be noticed that P.W. 24's evidence was on 29th November, 1952 and P.W. 46, was examined on 3rd December, 1952. P.W. 46, stated about the late commencement of the poll and that he told about this to the petitioner but the petitioner did not say anything about it.

34. After the examination of P.W. 46, almost every one of the witnesses began to say about the Adivimallanakeri voters and about the late commencement of the poll and some deposed about the preparation of the list. Generally speaking their evidence is that Adivimallanakeri voters came after lunch hour and were allowed to vote. The number of Adivimallanakeri voters who thus voted is mentioned as 40 or 50. With regard to what took place at 5 P.M. P.W. 47, who was the polling agent of the petitioner deposed that when Veerayya objected to the closure of the poll at 5 P.M. and referred to the presiding officer's earlier promise 'to continue after 5 P.M. the presiding officer allowed 15 voters to vote, and that the polling closed at 5-15 P.M.

35. P.W. 48 was a working agent for the petitioner to bring women voters to Sogi polling station. He said that after lunch the Adivimallanakeri voters finished voting by 3 P.M. but he would say before the Adivimallanakeri voters finished voting he had brought 100 women voters and not even one of them had voted. But immediately he changed the version and said that 30 or 40 of them had voted. If as he stated in chief examination, the Adivimallanakeri voters had finished voting by 3 P.M. there is no reason why so many out of the 100 people brought by this witness should not have voted. Later on he deposed that after 5 P.M. 15 women voters voted and that it took place till 5-30 P.M. and then added because of the polling officer's promise he allowed polling for half-an-hour. One interesting feature about this witness is that when he was recalled and examined in chief he deposed that he did not exercise his franchise as he was engaged in work and that he thought that he might vote at the end and that he was not allowed to vote because by that time polling had stopped. He had however to admit in cross-examination that his name is not found in the voters' list at all. If his name was not at all in the voters' list how could any question arise of his asking for a ballot paper or of his being refused any ballot paper. This last aspect shows that the evidence of this witness is not entitled to any belief. P.W. 49 who, as I said, is a non-lingayat deposed that he took 10 women to the polling station for the purpose of their voting, that some persons asked them to wait till the crowd lessened, that at that time there was clamour and that voters were prevented. So he took back the women home. As the witness was not able to give the precise time when he went home, he was asked to wait in the court hall till the time when he left the polling station arrived. The witness stated at 4-15 P.M. that that was the time when he left the polling station. It is apparent from the evidence of this witness that not only does he not say anything about the reasons that led to the several persons waiting at the polling station at 5 P.M. but that the voters he had taken with him left the station even before 5 P.M. P.W. 50 further deposed that Adivimallanakeri voters came there to vote and voted till 12 noon and after 1 P.M. he did not see any Adivimallanakeri voters there. This is contrary to what P.W. 48 had stated. He also said that he does not know any of the Adivimallanakeri voters. P.W. 51 is the village munsif of Nandihalli. He deposed that he was on duty as identifying officer at the spinning factory polling station and that Adivimallanakeri voters were coming there to vote till lunch time and that after lunch they did not come and that he does not know the reason. This also is contrary to the evidence of P.W. 48. P.W. 56 deposed that she went to the polling station in the school for the purpose of voting and that she could not vote because Adivimallanakeri voters came. According to her, she went at 7 A.M. and waited and that as there was a crowd she could not vote till lunch time and then went home and returned because one Rudra Gowd came to call her and others. Thereafter the Adivimallanakeri voters came and voted till sunset. She further deposed that when she returned home voting was going on and that because it was dark she returned. This part of the evidence would show that the voting must have been going on even after 5 P.M. and that there is no question of her being prevented from voting. She further stated that she did not know the names of those that accompanied her either when she went to the polling station or returned from there.

36. P.W. 57 is another lady who deposed just like P.W. 56. She would say that at sunset time there were lot of people and she was not allowed to go in any so she did not cast her vote. She added that till lamp lighting time she waited there at a distance of about 50 yards from the polling station. In the course of cross-examination she said that because she was an old lady she could not get into the crowd and was standing at a distance of 50 yards. As regards giving preference to Adivimallanakeri voters to exercise their franchise, this lady deposed "Sogi women did not go with the neighbouring village voters to vote. All the women voters of our place were asked to wait. The elders of our village asked us to wait." If that

was the reason why any women voters of Sogi waited till 5 P.M. we fail to see why any aspersion should be cast against the presiding officer.

37. P.W. 58 simply says that after it was announced that polling was closed, she went home. She does not say that she asked the Presiding Officer to allow her to vote or that he refused to allow her.

38. P.W. 59 would say that Adivimallanakeri voters voted till sunset and thereafter the polling was closed. He also like P.Ws. 47 and 48 stated that 18 or 19 people of his village were allowed to vote after the closing hours, but that 200 or so remained without voting.

39. P.W. 60 deposed that polling was stopped at 7 P.M. He says that there were about 200 like him at 7 P.M. who did not vote. In the course of cross-examination he deposed "Sogi voters had to vote at the school and the Adivimallanakeri voters had to vote at the Therubazaar. The school is in the Therubazaar. Now I say that Adivimallanakeri voters had to vote at the gin. Both the polling stations were at the same bazaar but at a distance of one furlong". He further stated in cross-examination that he was staying at the polling station in the school from 1 P.M. till 5 P.M. and that Adivimallanakeri voters did not vote there to his knowledge. It appears to be very doubtful whether he had gone to the polling station stall. He admitted in cross-examination also that voting went on after 5 P.M. and the 50 people voted after 5 P.M. including males and females.

40. P.W. 61 is Rudragowd who is said to have accompanied the ladies P.Ws. 56 and 57. He said that on account of the representation of the Adivimallanakeri voters that they had been waiting and had not taken meals, they may be allowed to go back soon and thereupon the elders suggested that the Adivimallanakeri voters might be given first chance. He however also deposed about the promise of the presiding officer to extend time. This witness like P.W. 57 would throw the responsibility of giving preference to Adivimallanakeri voters on the elders of Sogi. He further deposed that at 5 P.M. the presiding officer purported to close the poll and that Veerayya protested and thereupon the presiding officer took "10 or 15 more votes and then closed". As regards the number of Adivimallanakeri voters that might have voted, he says they might be 100 or more and he further stated that his own agent H. Mallayya asked them to wait till Adivimallanakeri voters polled.

41. P.W. 62 is Veerayya who was referred to the evidence of the other witnesses. He gave evidence on a number of points, but so far as the point now under consideration is concerned he deposed that one kotrappa came to him when he was at Hadagalli that polling had not commenced and that he thereupon went in a car at 10-15 A.M. that there was confusion, that R.W. 39 and the presiding officer stated that polling would begin and that there should be no galat and that all the voters would be allowed to vote, and thereupon polling began. As regards the number of Adivimallanakeri voters that came after 1 P.M. he deposed that only 30 or 40 people came and those 30 or 40 were allowed to vote. He also deposed that during the time when these 30 or 40 people voted, 100 voters of Sogi also would have voted and that this went on till 5 P.M. If that be so, there would be no question of the said 30 or 40 persons being shown preference. So to the next question put to him he replied that the taking of votes was being delayed. He deposed that 250 or 300 male voters and 200 female voters were waiting at 5 P.M. and that all of them had come to vote for the petitioner and that in spite of his protests the presiding officer and R.W. 39 refused and said that he might do what he liked. He further deposed that at 6 P.M. the petitioner came and asked for the continuation of the poll and that too was refused. It is significant that he does not refer to any list having been prepared. In fact when a question was put to him whether he sent any complaint to anybody either on that day or on the next day, he deposed that he became exhausted and therefore did not send any complaint. Contrary to what some of the other P.Ws. deposed he said that after 5 P.M. there was no voting at all and that not even one vote was taken after 5 P.M. This person has deposed that he was a member of the Congress for a long time but admits having worked in the Elections for the petitioner and Y. Mahabaleswarappa (P.W. 64) both of whom were independent candidates and both of whom were lingayats, one for the Assembly and the other for the Parliament. He would of course add that he did not like what the Congress was doing and so he worked for the opponents of the Congress. It would appear from his cross-examination that his son-in-law Veerayya was employed as the Supervisor of the Co-operative Society by Angadi Chennabasappa who is the President and was financing the Co-operative Stores.

42. R.W. 52 was the Presiding Officer for both the polling stations at Sogi. He deposed that Adivimallanakeri was attached to the polling station in the school (polling station No. 26) and not to station No. 27 which is the polling station in the spinning factory and that the voters' list of Adivimallanakeri was dealt with only in station No. 26. He denied that Adivimallanakeri voters had gone to the

ginning factory or that they were later asked to go to the other station. He further deposed that the polling commenced exactly at 7 A.M. With regard to the women's booth in station 26 some votes were recorded after 5 P.M. In the men's booth the polling practically stopped at 4-30 P.M. He deposed that the men's booth was kept open till 5 P.M. but no voters came thereafter 4-30 P.M. He further deposed that at 5 P.M. all the persons that were waiting outside were called and asked to enter the compound and after this announcement all those that were waiting entered the compound. The voters had already chits with them which were being issued by the official guide and he initialled on all of them. These were about 30 to 40. All of them voted and there was nobody else outside. He definitely stated that he did not receive any complaint from anybody that voters were prevented from voting. In the course of cross-examination he deposed that he reached Sogi at 12 o'clock on the day prior to the election and that all the arrangements were in progress even at that time. He was questioned whether there was no delay on account of his bath and food on the morning of the polling day. He replied that he did not have either bath or food and that the preliminaries took about 40 to 45 minutes between 6 A.M. and 7 A.M. He denied that anybody was brought to him at 9 A.M. or 10 A.M. to ask him to commence polling. Later on he was questioned whether the polling clerks did not know their work and whether there was no delay on account of it. He denied both these things. He denied that any preference was given to Adivimallanakeri voters and said that the principle adopted was "first come first served". He is a native of Guntur district and was working in the Thungabhadra Project Audit Office as an Upper Division clerk. Except the suggestion that he knew R.W. 39 and his relationship to 1st respondent and which were denied by him nothing else has been suggested to show why he should show any partiality to one side or other.

43. R.W. 27 is the karnam of Adivimallanakeri and Varkanahalli since 10 years. He deposed that the voters of both these places had to go to Sogi for voting. According to him at first the station where they had to vote was fixed as the ginning factory i.e. polling station No. 27 but 2 days before the polling day, orders were received changing it to Station No. 26 in the Elementary School. He says that this was proclaimed by beat of tom-tom in the village and that he was ordered by the Tahsildar to work in polling station No. 27 i.e., in the ginning factory because Varkanahalli voters had to vote there. He was identifying officer. He deposed that the polling began at 7 A.M. and that Adivimallanakeri voters did not come to Station No. 27 to vote. From his cross-examination and re-examination it would appear that the order received from the Tahsildar was returned back after the beating of tom-tom.

44. R.W. 39 corroborated the evidence of R.W. 5 and R.W. 27. He deposed that the polling started at 7 A.M. that Adivimallanakeri voters voted in the school polling station booth in the morning and in the evening, that at 4-30 P.M. there were no more voters coming to vote in the males booth and that in the females booth there were 30 or 40 voters left at 5 P.M. and they were allowed to cast their votes and this was over in three-fourths of an hour. In the course of cross-examination he was asked whether he did not take the presiding officer of Sogi in his vehicle from the bus stand to Sogi. He denied it and further added that he went walking and did not go in any vehicle.

45. From a review of the whole evidence on this topic it would be seen that a number of witnesses on the petitioner's side have admitted that at least some persons were allowed to vote even after 5 P.M. whereas some others like P.W. 62 would say that nobody was allowed to vote after 5 P.M. The admission of some of the P.Ws. that voting went on even after 5 P.M. accords more or less with the case of the respondent as spoken to by R.Ws. 5, 27 and 39. There is a little inconsistency between the evidence of R.W. 5 and R.W. 27 on the question as to whether Adivimallanakeri was attached to polling station No. 26 or polling station No. 27 and on the question as to whether there was any change. It however appears to us that R.W. 27's evidence explains the possible change and further shows that the change was published in the village by beat of tom-tom two days prior to the election. Possibly R.W. 5 did not know about these changes and might have taken the final arrangement as the arrangement from the beginning. There is no reason to disbelieve the evidence of R.W. 27 on this point and if his evidence should be taken as true, it is unlikely that many voters would have gone to the ginning factory polling station in the morning or that none would have gone to polling station No. 26 in the morning. Even if some persons not knowing about the tom-tom had gone to the ginning factory polling station and thereafter to the other polling station, having regard to the statements of some of the P.Ws. it is obvious that their number could not have been more than 30 or 40. It is also

quite possible that the elders of Sogi village allowed these 30 or 40 people to vote before the other voters of Sogi. It is however very unlikely that this little accommodation to the Adivimallanakeri voters would have resulted in any undue delay or in a wholesale disfranchisement as alleged by the petitioner. It appears to us that some little change that took place with regard to this Adivimallanakeri is sought to be utilised as a ground for contending that there was a wholesale disfranchisement. So far as the alleged delay in the commencement of the poll is concerned we are unable to believe the evidence on the petitioner's side to any extent. There was no reason why a responsible officer like R.W. 5 should have neglected his duties in that manner. Nor is it possible to believe the statement of the petitioner's witnesses that R.W. 5 promised to extend the time of franchise beyond what was prescribed by the rules. The case that after 5 P.M. the officer was very strict and did not allow any further voting improbabilises the other part of the case that he had promised earlier to continue voting after 5 P.M. No reason is assigned as to why he suddenly changed over like that. We are inclined to believe the evidence of R.Ws. 5, 27 and 39 in preference to that of the oral evidence on the petitioner's side on these several aspects. It is not without significance that neither the alleged delay in the commencement of the poll nor the alleged difficulty that arose on account of Adivimallanakeri voters are referred to in the petition at all. Apparently the case was left as vague as possible to enable any kind of evidence to be brought in.

46. *Ballahunsi*.—In this case also there are no details except what is contained in list No. 1 and what all list 1 says is that the presiding officer was the person that prevented the voters and that the number of voters prevented is 200.

47. There is only one witness examined on this matter on the petitioner's side and he is P.W. 63. He is a Lingayat and is the polling agent of the petitioner at Ballahunsi polling station. He admits that the polling started at 7 A.M. and except for one hour for lunch it continued till 5 P.M. According to him the polling officer was very slow in his work and was allowing only one at a time so that there may be no confusion and that at 5 P.M. 200 persons remained without voting. The witness says that these 200 had come at 2-30 or 3 P.M. from the villages and though he told the presiding officer that a large number were waiting, he said he could not continue the poll after 5 P.M. under the rules and that the voters remained for half an hour and went away. He says that he did not tell any of the officers as to what took place, and that he told the petitioner 3 or 4 days after the election.

48. As against this the presiding officer has been examined as R.W. 33. He deposed that at 5 P.M. he issued slips as per the rules to the persons who were waiting, that there were about 20 such persons and they voted after 5 P.M. He denied that 200 persons were present or were not allowed to vote. He says that nobody complained to him that there were any persons who could not vote. He stated that the polling in the morning was a bit slow and that after 10 A.M. it was brisk. Though P.W. 63 had stated in his evidence that the presiding officer was allowing one voter at a time and that was the reason why there was delay, no such suggestion was put to R.W. 33. On the other hand he was asked whether he declined to allow any further polling after 5 P.M. because the voters were slow to come in the morning. R.W. 33 is a native of Tanjore district and is employed as an Assistant Engineer, Road Sub-Division, Tungabhadra Project. We have no doubt that the case with regard to Ballahunsi is absolutely flimsy and unsupported by any reliable evidence.

49. *Machihalli*.—So far as this station is concerned, though in paragraphs 8 and 9, no details are given and though in list No. 1, all that is stated is that the presiding officer prevented 200 voters from voting, in connection with another topic viz., the alleged official bias, it is alleged that the presiding officer was very partial and that he was giving marked white slips to the polling agents of the 1st respondent and that such of those voters as had those marked white slips with them were allowed to enter the polling booths and exercise their franchise and that when the voters who had no such slips demanded that they should be allowed to vote, the presiding officer asked the agent of the 1st respondent to push back the crowd and thereupon the said agent Hanumanna Gowd took handfuls of sand and earth and threw them in the eyes of the voters and thus prevented many voters from voting.

50. The witnesses examined on the petitioner's side with regard to this are P.Ws. 13, 14, 26 to 30 and 38 and on the respondent's side they are R.Ws. 3, 17, 21, 29 and 34. All the P.Ws. who have spoken on this part of the case are Lingayats.

51. P.W. 13 was examined on a number of points including even bribery. He is the Chief witness that speaks about the alleged partiality and sand-throwing.

He goes much farther than the petition and says that the people were beaten with lathi also. He further deposed that the presiding officer went inside the booth and was saying to the voters in the booth "Give votes for our Government". The witness further deposed that the presiding officer removed the ballot papers which were on the ballot box containing the symbols of arrow and bow and put them in the box containing the symbol of bulls. There was then a quarrel and exchange of angry words between the witness and the presiding officer and then the police came. Even with regard to the police he has a bad word, because he would say that they came from the house of Hanumana Gowd. After all this preface, the witness stated that on account of all this the women voters he brought could not exercise their franchise and after remaining till 5 P.M. they were taken back by him to the village. In the course of cross-examination he deposed that there were no police officers at the polling booth and that the police came only at 3 or 4 P.M. after altercation between him and the officer. According to him one J. S. Kotra Gowd was in the thatti enclosure along with 4 or 5 others and he was writing chits. But he says that the said person did not witness the incident. If, as he deposed, so much fuss happened and there was exchange of angry words and interference by the police, it is somewhat surprising that this Kotra Gowd should not have witnessed the incident. The witness says that he told the petitioner about the incidents only one month after the election. He was fined in a criminal case of assault about a year back.

There is one important difference between the case put forward in the petition and the case as spoken to by this witness. In the petition the throwing of sand and earth and the pushing back of the crowd and the preventing of voters were all attributed to Hanumanna Gowd whereas in this witness's evidence he would implicate not only that Hanumanna Gowd but also the presiding officer. There is no mention of any beating by lathis in the petition but the witness refers to a beating by lathis. The petition does not make any reference to interference by police whereas the witness refers to the police coming on the scene. There is no reference in the petition to the transfer of votes from one box to another by the presiding officer.

53. P.W. 14 is the karnam of Gundagathi. It appears from his evidence that he was at the Machihalli polling station on official duty from 8-30 A.M. till 8-30 or 9 P.M. It is somewhat surprising that no questions were put to this witness about the alleged incidents and about the presiding officer showing bias towards the 1st respondent's voters and about the alleged transferring of votes by him from one box to another. He spoke altogether about a different matter viz., about the part that one Revenue Inspector S. V. Achar took by way of canvassing for votes on behalf of the 1st respondent.

54. P. W. 15 deposed that he went to the Machihalli Polling station to exercise his franchise at about 11 A.M. but could not give his vote because there was a large crowd and galata. He says that this took place at 12 noon and that they were pushed back. According to him on so being pushed back he went and sat under a pandal along with 4 or 5 other women voters who accompanied him. He deposed that they sat there till sunset and went towards the polling booths. According to him again and again there was galata and pushing back. But he says "By whom it was I can't say. I got disgusted and came away." The pandal under which he sat was 100 yards from the polling booth. In the course of cross-examination he deposed that there was a queue in front and behind that queue there was a confused crowd. Sometimes the persons in the queue in front were pushing back and sometimes from the crowd behind there was pushing. The evidence of this witness does not help the petitioner in so far as it does not connect either the presiding officer or Hanumana Gowd in any way. All that it can show at best is that there was a good deal of confusion on account of their being a large crowd and possibly inadequate police arrangements and nothing more.

55. P. W. 26 a man of Talavagalu deposed that he sent the voters of his village to Machihalli and then went to Gundagathi to bring the voters of that place. In that way he took 300 voters to Machihalli. He says that till 12 noon the work went on smoothly. But after lunch there was confusion each party trying to push its voters first. Busi Hanuma Gowd, according to him came and pushed the petitioner's party voters behind. The witness protested. It became 5-30 P.M. The Tahsildar came there and said "Let the people present near the poll give their votes" and instructed the presiding officer to issue chits and went away. The presiding officer and the 1st respondent's agent by name Kuruvatti Nagappa went outside the booth and the presiding officer gave some slips to Kuruvatti Nagappa who issued them to voters and the said Nagappa gave them

to the voters of 1st respondent's party. One J. Sanna Kotra Gowd, an agent of the petitioner who was informed about this by the witness demanded that papers should be given to those that were standing near and protested against papers being distributed to those at a distance. Thereupon Kuruvatti Nagappa said that the distribution of the slips was over and there would be no time and so no slips were issued. The presiding officer simply stated "Let those that received papers remain and the others go away". According to him 90 persons of Gundagathi, 100 from Lambadi Tanda and 15 from Talavagalu had to go away without voting. He deposed in cross-examination that neither he nor any other complained anything to the Tahsildar. He did not prepare any patti of the persons that were not allowed to vote. He admits that one Murigappa who is examined as P. W. 29 is his son-in-law and another Matada Chennabasayya examined as P. W. 30 is his Matastha. It will be seen from this man's evidence that he does not say anything about the part attributed to Hanumana Gowd in the petition and in the petition there is no reference whatever to Kuruvatti Nagappa. Inasmuch as the throwing of sand and earth are said to have taken place at midday and as the incident involving Kuruvatti Nagappa is according to this witness after 5 P.M. it is apparent that the incident spoken to by this witness does not find any mention whatsoever in the petition.

56. P. W. 27 states that he went to Machihalli along with some voters. He says that he took a bandy with a water-drum to supply water to the voters. According to him after lunch, there was galata on the ground that dust was thrown. He admitted even in chief examination that he was not the water cart and that he only heard about the incident. He says that Gundagathi village Munsif and Busi Hanumana Gowd were pushing back the crowd, that this went on for 15 minutes and after some people were pushed back, some were allowed to vote. At 4-30 P.M. arrangements began to be made for lighting and Busi Hanuma Gowd, Kuruvatti Nagappa and some others were talking among themselves that the polling would be continued even after night-fall. Thereupon the witness went to Chirastadahalli and told the Tahsildar who was there about it. The Tahsildar came to Machihalli in a car and the witness followed him on a cycle. The Tahsildar stated that chits should be given to those within the boundary and he went away. Nagappa and the presiding officer however gave chits only to people standing in a corner at a distance and those that were in the boundary were not given. He says that those that were beyond the boundary were persons belonging to the 1st respondent's party. The witness and P. W. 26 complained to their agents and the agents protested to the presiding officer who however replied that it was already time. He says that after the Tahsildar came and gave instructions about 200 people voted and that this went on till 8-30 or 9 P.M. This witness is indebted to P. W. 26's brother under a promissory note and he also writes documents for P. W. 26.

57. P. W. 28 belongs to Talavagalu and was the polling agent of the petitioner at Machihalli. He deposed that he was inside the polling booth and did not know what took place outside till 5 P.M. Then he heard P. Ws. 26 and 27 saying that chits were being distributed to some and not to the others and asked the presiding officers to distribute chits to all those present there. He deposed that he did not know to whom the presiding officer distributed chits as he was inside. He would however say that 300 were not given and that P. Ws. 26 and 27 complained to him that the persons that they had brought had not been given chits. When he came out he saw a crowd consisting both of people who voted and who had not voted. To certain questions put by the Tribunal the witness said that there was no galata at all inside the polling booth at any time and the polling went on smoothly and that the presiding officer did not encourage voters to vote for anybody. The evidence of this witness contradicts that of P. W. 13 so far as the alleged bias of the presiding officer is concerned. It also negatives to a large extent the evidence of P. W. 13 about the transference of votes from one box to another by the presiding officer and about the alleged incident that took place as a result of it. It is also not without significance that the witness does not say anything about the throwing of sand, mud etc. All that can be gathered from this witness is that at 5 P.M. there was a large crowd outside the polling booth including those that had voted and those that had not voted, that some chits were distributed by the presiding officer and that those to whom the chits were given exercised their franchise. The witness does not corroborate the evidence of P. Ws. 26 and 27 to the effect that Kuruvatti Nagappa was asked to distribute chits or that that man distributed chits.

58. P. W. 29 is the son-in-law of P. W. 26. He deposed that polling was actually over at 9 P.M. He deposed about P. W. 28 being called and told that chits were not distributed. The witness says "I was told that chits were being distributed only to 1st respondent's people. I did not go out at all". To a question

put by the Tribunal he deposed that there was no galata or canvassing inside by anybody.

59. P. W. 30 deposed that he was present at the polling station till 9 P.M. His evidence closely considered, would show that most of the persons that were taken might have voted. According to him about 15 of Talavagalu people and some Tanda people did not vote.

60. P. W. 38 is one Kuruvatti Nagappa (not the Kuruvatti Nagappa who worked for the respondent as his agent). This witness states that out of the voters taken by P. W. 29, 30 and himself, 13 or 14 were left out and that 30 or 100 out of the Thanda voters were left. As regards the reason for their being left out he deposed as follows:—"There was a large crowd. There was pushing. So they did not vote. This went on even after lighting time "and to further questions put to him he deposed "Police people were pushing. Kuruvatti Nagappa working for 1st respondent was also pushing. That man belongs to Byrapuram. He was pushing saying 'move, move'. I got disgusted and sat on a pial".

61. R. W. 3 is the Presiding Officer at Machihalli polling station. He deposed that at about 4-40 or 4-45 P.M. he announced that all those within 100 yards radius were entitled to vote, and that he distributed chits as per the rules. According to him there was not much of rush and practically there was no difficulty in distributing the chits. He further deposed that he did not refuse to distribute slips to anybody that asked for them and nobody complained to him that chits were not given to them. He says that he does not know P. W. 13 and that P. W. 13 did not make any complaint to him. The voting continued till 7 P.M. and even after 7 P.M. nobody asked him for a chit. He denies the alleged throwing of sand and dust and says that the polling was quiet and peaceful. The other acts attributed to him viz., that he followed the voters and asked them to vote in a particular way are all denied by him. In cross-examination he deposed, that upto 5 P.M. he was announcing and waiting and distributing chits and that from 3 or 4 minutes before 5 P.M. nobody asked him for chits. He denied that any chits were given to Hanumana Gowd for distribution. With regard to the arrival of the Tahsildar the witness says that it was at 4-50 or 4-55 P.M. and that the Tahsildar asked him to allow those that were entitled to vote and he replied that he had already done so and that after the Tahsildar came nobody came and asked him for any chits and that he did not refuse any.

62. R. W. 17 Busi Hanuma Gowd denies all the allegations made against him and says that it was false that he was treating the police or that the police were staying in his house. He deposed that he has got a shop nearby and that he was actually in his shop after he exercised his franchise and that he was not in the polling station. His shop is at a distance of 40 yards from the polling station. He was questioned as to why so many allegations were made against him and he replied that it must have been due to the fact that he refused the petitioner's request to work on his behalf and also refused to state for whom he would vote. In order to show that he is interested in the 1st respondent he was asked whether he was not having dealings in the shop of Hubli Chandrappa of Harpannihalli. He deposed that he has cash dealings in that shop as also in several other shops and that he does not know whether Chandrappa works for 1st Respondent. There being no evidence that this man is under any obligation to Chandrappa or that Chandrappa was under any obligation to the 1st respondent, it is not easily seen why R. W. 17 should have left his shop business and gone to the polling station and remained there throughout the day and done things attributed to him.

63. R.W. 21 is the village Munsif of Gundagathi. It will be seen from P.W. 13's evidence that allegations were made by P.W. 13 against this witness as being one of those that worked for the 1st respondent and even going to the extent of giving some bribes on his behalf. This witness after denying all those allegations deposed that on the day of the election he was an identifying officer at Machihalli polling station and that he was there from 6 A.M. to 6 P.M. and that there was no disturbances or galata at the polling station and the polling went on peacefully. It was elicited in his cross-examination that when he was a student at Uarparahalli he was living in the house of one Ijari Paragrap R.W. 39, but he said in the course of re-examination of this witness that he was living in a room paying rent and that this was from 1926 to 1930. It is in the course of cross examination of this witness that the petitioner's advocate sought to take out that there were some ill-feelings between the two sects Sadars and Panchachars and that the witness is a Sadar whereas the petitioner is a Panchachar. According to the evidence of

the witness the 1st respondent as well as the petitioner approached him for help during the elections and that he told them that he was a Government servant and that he cannot work for anybody, and after the election the petitioner came and requested him for financial help to file the election petition and he refused.

64. R.W. 29 is Kuruvatti Nagappa against whom allegations were made by many of the P.Ws. He says that he was the polling agent and that he was inside the polling station very near the presiding officer and the polling clerks. He denies that there was any canvassing by the presiding officer inside the polling booth and he also denies that the presiding officer entrusted to him any chits for distribution. He says that all the persons present at 5 P.M. and had not voted were given chits by the presiding officer. According to the witness the polling booths were in an enclosure of thattis which were 7 ft. high and there was another bamboo fencing so that people could not go near the thattis. Thus he denies the possibility of P.W. 13 having been able to see the alleged transference of votes from one box to another. The cross-examination of this witness does not suggest that he has any motive to help the 1st respondent by giving false evidence unless it be that the very fact of his having been working for the 1st respondent in the election as a polling agent should be a sufficient ground to discredit his evidence.

65. R.W. 34 is the Tahsildar of Harpanahalli. He deposed that in the course of his inspection of the polling booths, he went to Machihalli at about 5-30 P.M. and that polling was going on at that time. He was there for 5 or 10 minutes and there was no complaint from anybody that chits were not given to those that were waiting or that voters were prevented from voting. He says that those to whom slips had been given numbered about 100. His evidence is sought to be discredited on the ground that the 1st respondent was a prominent congressman of Harpanahalli while the witness was Tahsildar at Harpanahalli. The witness was questioned whether anybody went to him to Chirastadahalli to ask him to stop polling at Machihalli because there should be no polling after 5 P.M. The witness denied it. It may be remembered that P. W. 27 deposed that he went to Chirastadahalli to complain to the Tahsildar after noticing that lights were being lighted at Machihalli polling station. It is not easy to understand the petitioner's case on this point. If according to him there were hundreds of persons of his party waiting at 5 P.M. for the purpose of voting, would any of his workers have sought for the stoppage of the poll. That seems to be highly improbable.

66. A review of the entire evidence on this question shows that there has been development from time to time in the case of the petitioner. As already indicated the incident relating to Kuruvatti Nagappa is not at all referred to in the petition. Further while on the one side it was sought to be made out that there were a number of voters belonging to petitioner's party who had not exercised their franchise, at the same time it was sought to be made out that the Tahsildar was requested to stop polling. Thus there is a contradiction in the very basis of the case from time to time. It is difficult to understand why the presiding officer R.W. 3 should have had any bias in favour of 1st respondent or why he should have chosen R.Ws. 17 and 29 for the purpose of distributing chits. The evidence is very vague as regards the number of persons that had been disfranchised and the evidence of at least one of P.Ws. viz., P.W. 30 shows that there would not have been any disfranchisement on a large scale. If we accept the evidence on the side of the petitioner, admittedly voting went on till 8-30 or 9 P.M. That being so there is no doubt that the presiding officer should have distributed a number of chits.

67. It no doubt appears from the evidence of the presiding officer R.W. 3 that he distributed the chits even before 5 P.M. After a careful perusal of his evidence it appears to us that he gave that evidence under an impression that the rules required the distribution of chits before 5 P.M. and that if he deposed in any other way he might be considered to have committed an irregularity. That this evidence of his cannot be true would appear from the fact that none of the P.Ws. or any of the other R.Ws. have deposed that the chits were distributed before 5 P.M. R.W. 3 also stated that he made a distinction between the persons within 100 yards and persons beyond 100 yards. There is no rule which required him that he should give ballot papers to persons within 100 yards of the polling station. It is evident that he is under a misapprehension even on that point and apparently under the belief that such a thing was necessary on his part, and seems to have deposed like that. Whatever that may be, there is no foundation nor evidence for the fact that he made a distinction between the voters of one party or the voters of the other party nor is there any satisfactory proof as to how many voters were



really disfranchised even assuming that R.W. 3's evidence that the distributed chits before 5 P.M. should be accepted.

68. The Act nowhere defines the limits of a "polling station". Rule 17 Sub-rule (2) of the rules made under the Representation of the People Act, 1951 provides that all electors present within the 'polling station' before it is closed shall be entitled to have their votes recorded. It further provides that the presiding officer shall close the polling station at the hour fixed in that behalf under section 56 and shall not admit there to any elector after that hour. Under Sub-rule 3 of that rule it is provided that if any question arises as to whether any elector should be deemed to be present within the polling station before it is closed the question shall be referred for the decision of the presiding officer or such polling station and his decision shall be final. It would appear that some instructions were given in view of the fact that there is no definition of the word "Polling Station". The instructions are to the effect that as soon as the hour strikes 5 P.M. the presiding officer should come out of the polling station and announce that those that had not voted should gather inside the polling station and after they gather the entrance to the polling station should be closed and those inside only should be given chits and allowed to vote. It is obvious from the several provisions referred to that the presiding officer has no authority to allow any persons who are not present at 5 P.M. to vote and for the purpose of finding out who were present at 5 P.M. a particular procedure is prescribed in the instructions and he is also given the discretion to decide if there should be any question for decision as to whether a particular person was present within the polling station or not. Assuming that representations were made to the presiding officer at any of the above stations that some persons had waited and were not given ballot papers unless it is further established that those persons were actually present at 5 P.M. it cannot be said that the presiding officer disfranchised those voters. It would be seen that in some cases the witnesses deposed that representations were made to the presiding officers at 7 or 8 P.M. to issue ballot papers. It would have been impossible and it would have been beyond the powers of the presiding officers to have issued any chits at that hour.

69. Even assuming (on account of the large volume of evidence adduced) that there might have been some persons who were present at the polling stations and who did not vote, still there is no satisfactory proof as to how many such persons were really disfranchised. The evidence is very vague and must be considered unreliable at least so far as that point is concerned. Except in one case; there are absolutely no documents, and we have already referred to the unsatisfactory nature of the said document even in that one case. After the election is over the defeated candidate may try all means to unseat the successful candidate, and unless the evidence is of such a nature as to be beyond reasonable doubt, the same cannot be accepted.

70. Under section 100(2)(c) of the Representation of the People Act it is not only necessary to show that there has been an improper refusal of votes but it should also be shown that the result of the election has been materially affected by such improper refusal. A good deal of controversy arose in the course of arguments as to how exactly it can be proved in a case like this that the result of the election has been materially affected. One contention was that besides proving that a particular number of voters were not allowed to exercise their franchise, it should also be proved that so many out of them would have voted for the petitioner and so many for the successful candidate, and then if such evidence showed that the successful candidate would not have succeeded, then only it should be held that the test is satisfied. Another argument was that all that is necessary to prove is that the number of voters that were disfranchised was more than the difference between the successful candidate and the defeated candidate and that if that is shown, an inference can be drawn that there was a possibility of the successful candidate not having been elected and that it is not necessary to prove further that he would certainly not have succeeded. One other argument was that it is only necessary to prove that the irregularity in question has substantially constituted to the success of the returned candidate. Still another argument was that the exact number of voters that were disfranchised need not be proved with any exactitude, or shown to be more than the difference between the successful and the defeated candidates and that having regard to all the facts proved, it would be open to the Tribunal to infer the possibility of the irregularity having been so great as to have materially affected the result of the election. It appears to us that it is unnecessary in this case, having regard to our findings on the questions of fact, to say which of these propositions would be correct. It is enough to say that there is no satisfactory material that a large number of voters were disfranchised or that the number was so large as to give rise to an inference that it might have materially affected the result of the election.

71. *Issues 4 to 6(d).*—All these issues relate to the charge of bribery and lists II and II-A of the petition. The bribery that is pleaded is of two kinds, one relates to lump-sum amounts paid by the 1st respondent or his agents to certain persons for being paid to individual voters for the purpose of securing their votes, and the other relates to the amounts paid to individual voters themselves for the purpose of securing the votes of themselves and those connected with them. List II gives the particulars of individual bribery and list II-A gives particulars of lump-sum bribing. Issue No. 4 is a general issue which deals with the question as to whether there was extensive bribing within the meaning of section 100(1)(a) of the Representation of the People Act. Issues 5 and 6 relate to the several items of bribery as detailed in lists II and II-A. In so far as the names of two individuals Roddalingappana Basava Reddi of Arsanahal and Reddi Basalingana Gowd of Cundagathi are expressly mentioned (one with regard to item 8 of list II and the other with regard to items 9 to 12 of list No. II and 5 to 9 of II-A) separate issues were framed about the charges levelled against them. Other necessary issues were framed for the purpose of deciding whether if they had committed the said acts, they did so with the connivance of the 1st respondent or his agent.

72. The corrupt practice of bribery is referred to in paragraph 10 of the petition. A perusal of the same shows that it merely refers to the particulars in Lists II and II-A and nothing more. When we turn to Lists II and II-A, we find details given as regards the dates on which the several items of bribery took place, the places where they were committed, the persons by whom the bribes were given, the persons to whom they were given and the amounts. Other particulars as regards the *modus operandi* adopted for the purpose of giving these bribes are not indicated either in the petition or in the lists.

73. *Neelgonda.*—We will first deal with the evidence relating to the bribery in Neelgonda village. It will be seen from Lists II and II-A that there are 7 items in List No. II and 4 items in List No. II-A with regard to this place. A major part of the bribery charge relates to this place.

74. The evidence shows that the petitioner has married in Neelgonda and he has also got other relations there. The petitioner's own case is that Neelgonda is one of his strong-holds and that the elders of the entire village had assembled and pledged support to him. To this effect he also adduced oral evidence of several witnesses. It would appear from their evidence that a meeting was held in the house of the village Munsif himself for the purpose of enlisting support for the petitioner in that village. The witnesses were however careful to say that the Village Munsif was not present at the meeting but his brother was present. Whatever that may be, it is obvious from the case of the petitioner as spoken to by him and by his witnesses that Neelgonda is a place where the petitioner has got a large following and influence. This aspect of the matter has been introduced by the petitioner for the purpose of probabilising his case regarding the bribery, his contention being that because the 1st respondent was unable to secure any votes from this place, he chose the backdoor method of bribing the voters in that place and securing some votes for himself. From the very foundation of the petitioner's case, it is clear that he has a large following which would make it easy for him to get any number of witnesses from this place to speak on his behalf.

75. The petitioner examined P.Ws. 2 to 11 and we find that except P.Ws. 6 to 8 and 10 who are described as Valmikiis all the others are Lingayats.

76. P.W. 2 deposed that two days before the election, the 1st respondent, one Kotrappa and one Kotrabasayya of his village went to him three hours before dawn and requested him to help them. They told him that they had come 4 or 5 times to that village and that there was no response. He replied that they had already pledged their word and that they cannot do anything. Thereupon the 1st respondent and the two others told him that they would pay money to the voters. He replied that it was impossible for him to do anything. Then they asked him to accompany them to Madivalam Chennabasappa at least. He took them to Madivalam Chennabasappa's house and woke him up. He told the said Madivalam Chennabasappa that these people were worrying him much and that he might secure them some votes for them by paying Rs. 5 or Rs. 10 per voter. The witness says that after saying that he went home. From the cross-examination it appears that this person was indebted to one Barikera Huchavva of Neelgonda and that it was discharged last year. That lady Huchavva and her mother Nagavva are *lestis* (public prostitutes). Huchavva is the permanent kcep of a shanbogue by name Siddappa. This shanbogue Siddappa is the brother of one Kotrabasappa, whose daughter is married to the petitioner. Apart from this interestedness, the evidence of P.W. 2 if believed would place him more or less in the position of an abettor with regard to this offence of bribery.

77. P.W. 3 is Madivalam Chennabasappa to whom the 1st respondent and others are said to have been taken by P.W. 2. He has deposed that the 1st respondent and the two others along with P.W. 2 came to him two hours before sunrise and woke him up, and in spite of his telling them that no purpose would be served by his taking them anywhere as they had already promised to vote for the petitioner they insisted upon his taking them and he took them to Badarageri, Madarageri and Vadrageri. The 1st respondent stated that he was prepared to spend at the rate of Rs. 5 per voter in Badarageri and one Chowdappa who was made to wake up was given Rs. 500 for the purpose of securing votes. Thereafter they are said to have gone to Madarageri i.e., Harijangeri and contacted Mylappa, Manda Mylappa, Dandappa, Dodda Hanumappa and Basappa and gave into their hands Rs. 200 to enable them to reconstruct their temple Durgammagudi and the 1st respondent asked them to secure votes for him. From there they are said to have gone to Vadrageri and woke up Dodda Thimmappa, Sanna Thimmappa, Venkappa, Kollappa and Sanjivappa and the 1st respondent put Rs. 100 into the hands of Dodda Thimmappa asking them to spend it for their Kollaramma Jatra and saying that half of their votes should be given. The witness says that from there they went to a hotel of one Buddrayya and the 1st respondent gave him Rs. 200 and asked him to feed the voters whoever they may be, whether they will vote for the petitioner or the 1st respondent with tiffin on the following day. In the course of cross-examination this witness admitted that he is indebted in a sum of Rs. 200 to Shanbogue Siddappa (whose name has already come for consideration in considering P.W. 2's evidence). Shanbogue Mallappa who is a brother of that Shanbogue Siddappa, is the President of the Panchayat Board for the last 12 years and during all these 12 years the witness has been a member of that Board.

78. One very important fact that has to be considered in considering whether this witness should be believed or not is this. He says that not only did he tell the 1st respondent that all the people had decided to vote for the petitioner and that he would not be able to do anything but he would further state that even the persons into whose hands the moneys were paid said the same thing. For instance he deposed with regard to Chowdappa as follows:—"Then Chowdappa said that there are not many whom he could influence and that everybody had promised to the petitioner and that he cannot say whether people would be amenable to money". With regard to the Harijangeri people the witness deposed "They also replied that they had promised their votes to the petitioner. The 1st respondent said that he would give Rs. 200 to reconstruct their temple Durgammagudi. They replied that they would not do it. R-1 said that they should help him at least with half the Harijan votes and they agreed to it and took Rs. 200". So far as regards Rudrayya's hotel is concerned, I already referred to the fact that the 1st defendant told Rudrayya to feed whichever voter comes there whether it was a voter on behalf of the petitioner or on behalf of the 1st respondent. Whatever may be said about the Harijangeri (because according to P.W. 3 they agreed to get half the votes), the question would arise whether if Badarageri man stated that they would not be able to do anything in the matter and that it was not likely that he would be able to secure any votes, the 1st respondent would have simply thrown away money in the manner that he is said to have done. P.W. 3 stated in the course of cross-examination that there were 30 and odd Harijan voters and 20 or 25 Vadra voters. If what the Harijans were asked was only to give half the votes to the 1st respondent, it would not have been necessary for R-1 to pay them

Rs. 200. Similarly if the Vadra voters were asked to give only half of the votes it would not be necessary to pay them Rs. 100 because the case of the petitioner is that Rs. 5 per head was the amount agreed upon. The witness deposed at first in cross-examination that the petitioner never went to his village after this bribing and that he never told him about it. I have already referred to the evidence of P.W. 2 that the petitioner went to Neelgonda on the very day on which the bribes were given and that the petitioner told him "Let things take their course. Leave it alone". The evidence of P.W. 3 especially when he says that the petitioner did not come to his village after this bribing contradicts the evidence of P.W. 2. Later on in his evidence the witness chose to say that 8 or 10 days after the election, the petitioner went to his village and at that time the witness told him about all these facts. The witness admits that he did not tell either the village munsif or the karnam about what had taken place. Above all according to the evidence of the witness he would be an accomplice.

79. P.W. 4 deposed about the meeting that was held in Neelgonda a month before the elections to support the petitioner's candidature and about the subsequent attempts by 1st respondent to canvass for votes in Neelgonda and about the 1st respondent coming finally a few days before the election. He says that the 1st respondent went to his house along with one Kotrabasayya who is a school

teacher half an hour before sunrise and a sum of Rs. 30 was offered to him because there were six voters in his house. In the course of cross-examination it appeared that the father's sister of the petitioner's father-in-law is the mother of this witness. As in the case of Badarageri and Harijangeri people, this witness also deposed as follows:—"We said we could not vote for R-1 as we had already promised to the petitioner. R-1 said "Don't make noise". We have arranged to pay Rs. 5 for a vote. Even big people have turned and agreed to vote for Rs. 5 per vote. When I refused to take the money they put the currency notes into my pocket. I gave back the amount to 1st respondent. Kotrabasayya said to R-1 that I had not the fortune to get money from them. R-1 put the money i.e., Rs. 30 on the pial saying take or leave as you like and went away". Later on in the course of cross-examination he deposed that he told his elders that he would vote for the petitioner and nobody else. Thus this witness wants the court to believe that in spite of his expressing himself that he would not get any votes for the 1st respondent, the 1st respondent was prepared to simply leave the money on the pial and go away.

80. P.W. 5 deposes that in his house there were two voters, that the 1st respondent, Rudrayya and Kotrabasayya, school-master came about the time of sunrise and asked him that he should vote for the 1st respondent and that he represented that he had already given word to the petitioner. Then Rudrayya told him that he need not do it gratis and that Rs. 10 would be given for the two votes. Thereupon the witness gave it back saying that it was not possible for him. Then the 1st respondent thrust it on him forcibly saying that he was a poor man and went away. In cross-examination he stated "I never told R-1 that I would vote for him even after he gave the money. My younger brother was not present when the money was given. I did not inform him about the receipt of Rs. 10". It may be noticed that it was including this younger brother that it was considered that there were two votes in his house. It was suggested in his cross-examination that he was working as a lessee under Madivalappa, the father-in-law of the petitioner. The witness deposed that it was not true. I already referred to the fact that it was one Rudrayya that is said to have taken part in bribing this witness. Some questions were put to the witness in order to find out whether that Rudrayya could exercise any influence over him. He deposed "It is six years ago that I left Rudrayya. As I wanted to have personal cultivation I left him."

81. P.W. 6 deposed that the 1st respondent, one Kotrajja, the school master Kotrabasayya and Chowdappa, all these people, went to him just about the time he woke up. There were 5 voters in his house and Chowdappa asked him to divide the votes and give 4 to the petitioner and one to the 1st respondent and even though he declined Chowdappa said "I will give you Rs. 20. You work among your kinsmen, secure the votes". The witness deposed that he declined that also but Chowdappa put the money Rs. 20 by force in his pocket. In the course of cross-examination he deposed that he considered his promise to the petitioner as more important than Chowdappa. The witness is a poor man and is the son of a Lesi i.e. a prostitute.

82. P.W. 7 deposed that there were two voters in his house, himself and his brother and that 2 or 3 days before the election the 1st respondent and one Dodda Chowdappa went to him and Dodda Chowdappa stated that the witness should be on his side and should vote for the person in whose favour he voted. He made it clear that he would vote for the box with the symbol of bulls. The witness refused, but still Dodda Chowdappa insisted and put Rs. 10 into his pocket. In the course of cross-examination he deposed that one Sivarudrayya is the Yajaman of his village and though the witness follows what respectable people tell him, he does not follow Dodda Chowdappa's advice. He says that he is not under any obligation to him. He says that in spite of Dodda Chowdappa asking him not to depose in court he declined that advice and went to court saying that he would depose to the truth. It was suggested that the sister of the witness one Gubbavva who is a lesi was being kept by shanbogue Madivalappa and that he is working actually under that shanbogue. The witness denied these suggestions.

83. P.W. 8 states that the 1st respondent and Chowdappa went to him 2 days before the election and asked him to vote for the 1st respondent and the witness stated that he had already promised to the petitioner and that he cannot go back on his word. Then Chowdappa and the 1st respondent told him that there are two votes in his house and that he may give one to the 1st respondent and the other to the petitioner and Chowdappa put Rs. 5 into his pocket. In cross-examination the witness deposed that he refused to take the money but that Chowdappa put it into his pocket in spite of the fact that he did not tell Chowdappa that he would give his vote. The witness deposed "Even after Rs 5 was put in my pocket,

I told Chowdappa that neither I nor my brothers' vote would be given to R-1". Subsequently he volunteered and stated "I did not vote for him. I must be truthful. As I promised my vote to the petitioner, I did not vote for R-1". It was suggested in cross-examination that the father-in-law of the petitioner has sent this man to give evidence but the witness denied it.

84. P.W. 9 deposed that two days before the election, the 1st respondent and the school-master went to him and asked him to give his vote to the 1st respondent. The witness told them that the people of his village had decided to vote for the petitioner and that he had promised to vote for him and so he cannot vote for the 1st respondent. The school-master said to the 1st respondent "He is a poor man. Give Rs. 5 to him" and asked the witness to give vote for the 1st respondent. The 1st respondent gave him Rs. 5 in spite of the witness declining to take it and the witness took it. In the course of cross-examination he deposed that he and the schoolmaster are not very good friends and that he was just like all other people for whom he does cooly work. Then he deposed "I did not tell Kotrajja that I would vote for R-1. I told him that I would vote for the petitioner only. Even after Rs. 5 was given I said the same thing".

85. P.W. 10 is one Hallavva and she was appointed to put the indelible ink mark on the thumbs of the women voters. This woman deposed that two days before the election the first respondent, Kotrayya and the schoolmaster Kotrayya went to her and asked her to tell the women voters to put their votes in the box bearing the bulls symbol and paid her Rs. 25 for that purpose. She deposed that she declined to take it but that they insisted and she took it. She further deposed that at the time of putting the indelible mark she was whispering to the women voters to put the ballot papers into the box with the bulls symbol. In the course of cross-examination she deposed that she could not help taking the money when it was paid in spite of her protests. Then she stated that because she had been asked to tell the voters in that particular way, she told them so. She says that she knew that it was wrong and being afraid she would be driven out if she spoke aloud she was saying in low tones. When she was in the box it was found that she was speaking very loudly and she was actually asked to demonstrate the low tone in which she told the voters. Thereupon she said in a low tone "You put the vote in the bulls box". But even then the same appeared to us sufficiently audible and would have been audible to the other officers that were working there. The witness is a very highly intelligent witness. There is nothing improbable if her appointment on that day was due to the village munsif of that place.

86. P.W. 11 does not say anything about the bribery but he says that the last time the 1st respondent came to Neelgonda was 2 days before the election and that at that time he met the 1st respondent at 7 A.M. at the house of one Manjappa. He further deposed that after the counting he came to know that the 1st respondent secured about 200 voters from Neelagonda and began to suspect that he must have bribed as he was not expected to get even one vote and then met P.W. 10. He says that he enquired her whether she has taken money from the 1st respondent and directed the voters to put the votes in the box containing the symbol of bulls, she replied that she had done so. In the course of cross-examination he deposed that he met the petitioner 7 or 8 days after the election but when he was questioned whether he was not in Harpanahalli on the 4th and 5th when counting went on he admitted that he was present but said that he did not know whether the petitioner was there at that time. One portion of his evidence in cross-examination is very significant. "After I came to know about P.W. 10's conduct I carried the news to my father and neighbour. Two days after I learnt about it I met the petitioner. I told him about P.W. 10's conduct. I also told him that many other persons had received bribes. By then I had not known the names of the persons that had received the bribes." The witness would say further that after the petitioner enquired P.W. 10 he asked the elders to inquire who all had received bribes. It thus appears that the petitioner was not made aware of the names of persons who actually received bribes till 7 or 10 days after the election. The witness admits that he had worked and helped the petitioner in the election, and he is also the son of the village munsif and I have already referred to the evidence of the P.Ws. to the effect that it was in the village munsif's house that the first meeting was held and it was decided that the entire village should support the petitioner. It was suggested in the evidence of this witness whether it was not his father that recommended P.W. 10 for the job. He does not deny it but says that he does not know.

87. R.W. 2 is the first respondent himself. He denied in his evidence that he gave any bribes to any of the people mentioned in the course of the evidence on the side of the petitioner. R.W. 6 is Rudrayya, the hotel-keeper. He denied

that the 1st respondent gave him Rs. 200 or any money. He deposed that the 1st respondent never went to his hotel. He also denied that he gave Rs. 10 to P.W. 5 on behalf of the 1st respondent. In the course of cross-examination he stated that P.W. 5 was not a servant under him. The entire case of the petitioner with regard to his alleged payment of Rs. 200 to this witness was changed in the course of the cross-examination of this witness. He was questioned whether the 1st respondent did not authorise him to purchase *samans* worth Rs. 200 in the shop of one Lachappa of Harpanahalli for giving free tiffin to voters. This shows that the evidence that Rs. 200 was paid in cash cannot be true. If as a matter of fact Rs. 200 was paid in cash what could be the necessity to ask the witness to purchase *samans* in a particular shop. R.W. 7 is Chowdappa and he deposed that he did not work for anybody in the elections and that it was a falsehood to say that the 1st respondent gave him Rs. 500 to enable him to purchase votes. He definitely stated that the 1st respondent did not give him any money and that he did not distribute it to anybody. He also deposed that he did not know P.Ws. 6 to 8, and that he never gave any money to them. All that was elicited against him was that he knew the 2nd respondent and his brother Kotrajja and that 10 years back he was cultivating their land. In the course of cross-examination the following question was put by the petitioner's advocate to the witness: "The sum of Rs. 500 given by R. 1 to you you utilised for your house construction and did not give even to voters?" The witness replied that the 1st respondent did not give him Rs. 500 at all and that the witness was constructing his house with his own funds. It should be very interesting if the 1st respondent should have chosen a man of this type for giving bribes to voters if really the suggestion is true. R.W. 8 is one of the Harijan elders into whose hands a sum of Rs. 200 is said to have been paid. He denies that R. 1 give him Rs. 200 or any amount. He says that the temple was built by borrowing money. It is not shown that this witness is in any way interested in the 1st respondent. R.Ws. 9 and 19 are two other Harijans who are mentioned as the elders who received the above mentioned sum of Rs. 200. Both of them have denied the case of the petitioner. R.W. 9 deposed that the money realised by the sale of skins of dead cattle was collected and that was utilised for the construction of the temple. R.W. 19 also deposed to the same effect. R.W. 19 further says that they also collected some subscriptions from their people. It is not shown that these persons are in any way interested in the 1st respondent. R.W. 15 is Sivayogappa who according to P.W. 3 was one of the persons that accompanied R. 1 to Neelagonda at the time of the meeting at the house of one Nanjappa and later on also on the date of the alleged bribes. It may be at once stated that the other witnesses examined to corroborate the evidence of P.W. 3 have not mentioned his name. R.W. 15 has admitted in his evidence that he was going along with the 1st respondent to several villages including Neelgonda and that they were holding meetings but he denies that they ever went from house to house or offered bribes. His evidence must naturally be entitled to very great weight because he is a Lingayat Jangam. The only suggestion made against him was that he is indebted to P.W. 20. He denied it. Assuming that he is so indebted he would more be under obligation to P.W. 20 and his evidence on behalf of 1st respondent would not suffer to any extent on that account. R.W. 15 is Kotrabasappa, school master who according to some of the P.Ws. accompanied R. 1 when he went to give bribes. He denies having worked for any one in the elections and he also denied that the 1st respondent was living or staying in his house. He denied having accompanied the 1st respondent to any of the places mentioned in the evidence of P.Ws. or having given bribes. He also denies that he asked P.W. 10 to whisper into the ears of voters that they should put their votes in the box with bulls symbol or that he gave Rs. 25 to her. He deposes that Gubbavva of his village is related to P.W. 10 and that she is a ryot of Madivalappa and she is also the kept mistress of Madivalappa. This man was taken as a reserve clerk in the polling booth for women and he denies either P.W. 10 or himself asked the voters to vote for anybody. The cross-examination of this witness does not show that he is in any way interested in the 1st respondent. The evidence of this witness also is entitled to very great weight because he is a *lingayat jangam*. When questioned in cross-examination whether he was prepared to swear on Rudraksha and Vibhuti (two very sacred things for *lingayats*) he deposed that he was prepared to do so but the Tribunal was not prepared to allow such a thing as it might lead to other *lingayat* witnesses of the respondent being dissuaded from coming into the box.

88. R.W. 30 is Kotrajja who is said to have accompanied the 1st respondent to Neelgonda when 1st respondent gave the bribes in question. This person is a member of the District Congress Committee and President of the Taluk Congress Committee and he was also a member of the District Congress Propaganda Committee at the time of elections. Whether a person who held such high posts in the Congress would have resorted to the mean things that are attributed to him

would itself be doubtful. The witness has completely denied all the allegations made against him. He said that they never carried on house to house campaign and that they never went either to Harijangeri or Vadrageri or Badarageri to canvass. Two days before the elections they went to Neelgonda but it was at 9-30 A.M. and they remained there for three-fourths of an hour and returned. The only suggestion against him is that the 2nd respondent and the 1st respondent are partners in a factory called Mahavir factory. It would appear that this factory was sold to the Marketing Society for Rs. 62,000 and that there is some surcharge action against the directions on the ground that it was purchased for high price. We fail to see how these things can have any bearing on the question of the alleged bribery. The evidence of this witness also is very important because he is a *lingayat*.

89. After a review of the entire evidence on this topic, it will be seen that the evidence adduced on the side of the petitioner, apart from its being interested on the ground that most of the witnesses are *lingayats*, is also in the nature of accomplice evidence because most of the persons examined are persons who actually received the bribes. It is common knowledge that the evidence of an accomplice is partly accepted as sufficient unless it is corroborated in material particulars. There is absolutely no such corroboration in this case. There is not a single fact which the Tribunal can lay its hands upon with any amount of certainty to say that it would afford a corroborating circumstance. The mere fact that the witnesses that are examined on the petitioner's side as being the alleged bribe takers are poor persons cannot lead to an inevitable inference that the alleged giving of bribes is true. If they are poor they can as well be suborned by the petitioner to give false evidence as against the 1st respondent. In fact that suggestion was made in the evidence of most of the P.Ws. that are alleged to have taken bribes. Further it is rather surprising that the 1st respondent should go on giving moneys even when the persons were actually telling him that they were not going to vote for him and that they cannot promise any help to him. Such a conduct on the part of the 1st respondent is somewhat strange and unnatural. Above all, except the statement of the Village Magistrate's son P.W. 11 that he learnt that R. 1 got 200 votes in Neelgonda, there is no other evidence that he got so many or as to whether he got any votes at all. It appears to us that the petitioner taking advantage of the fact the Neelgonda is a strong-hold of his and he has got relations and lot of influence has chosen to get some persons who could be got as to give evidence in this case. We are unable to hold that the charge of bribery in Neelgonda has been made out.

90. *Holalu*.—This relates to item 8 of list II. According to the information given in list II one Roddalingappa Basava Reddi of Arasanohal is said to have given Rs. 25 on behalf of the 1st respondent to one Dakshseti Rudrappa and this is said to have taken place on 31st December 1951 at Holalu. As in the other case the particulars of the *modus operandi* are not mentioned.

91. Three witnesses are examined in this connection on behalf of the petitioner and they are P.Ws. 31, 34 and 35 and R.Ws. 2, 11, 14, 15, 16 and 37 are examined on behalf of the 1st respondent. P.Ws. 31, 34 and 35 are all *lingayats*.

92. P.W. 31 deposed that two persons Adirajappa and Arasama Basava Reddi went to his village 2 days prior to the election day on behalf of the 1st respondent and distributed money. In particular he says that in his presence they gave Rs. 25 to D. Rudrappa saying that he must vote and the coolies under him also should vote for R. 1. In the course of cross-examination he said that it was Basava Reddi that gave the money and that except himself there was no-body else present at that time. He did not tell about this to anybody till 15 days after the election when he told the petitioner who came to his village. He deposed that at that time none else was present, but immediately changed his answer and said that several were present when he told him. But he cannot give the names of those persons that were present. He says that Adirajappa and Basava Reddi knew that he was a worker on behalf of the petitioner, but in re-examination he contradicted himself on that point.

93. P.W. 34 has merely deposed that Holalu is a strong-hold of the petitioner, that the 1st respondent asked the witness to get votes for him in Holalu and he asked the 1st respondent to organise a meeting and address the electorate. He also deposed that at the time of that meeting some questions were put to 1st respondent and he could not convince the audience, and that he had no chances in Holalu. He farther deposed that Basava Reddi and Adirajappa were going to Holalu on his behalf. According to what he stated in cross-examination a public meeting was held 8 or 9 days before the polling. He stated that all his friends in the village compelled him to work for the petitioner if 1st respondent failed to answer questions. He was not bold enough to deny the alleged stone pelting, but said it did not come to his knowledge. To a question put by the Tribunal, the

witness replied that there was no organised party working against the Congress in Holalu.

94. P.W. 35 is Rudrappa who is said to have been bribed by Basava Reddi and Adirajappa. He says that he was so approached because he had dealings with Adirajappa and that Adirajappa stated that he would file a suit against him if he did not secure votes for the first respondent. In the course of cross-examination he stated that he did not know whether Adirajappa filed a suit and obtained a decree against him. Admittedly he has no property and his house also was sold in execution of another decree obtained by one Arkaji. He admits that there are no coolies under him but he says they left him two months ago and prior to that they had served under him for 5 or 6 months. The evidence was given by him on 1st December 1952 and if 8 months are counted from that date that would be only in April 1952 whereas the election itself took place in January 1952.

95. The 1st respondent as R.W. 2 has denied that he ever asked Basava Reddi or Adirajappa to secure votes for him by bribing and to his knowledge no bribe was given to P.W. 35. He deposed that he did not also connive at any such thing. The only cross-examination against R.W. 2 on this part of the case is to elicit from him that Basava Reddi actually worked for him and nothing more. R.W. 11 is Basava Reddi and he deposes that he is a member of the District Congress Committee, that he never bribed Rs. 25 or any amount to P.W. 35 or to anybody. He says that he does not know P.W. 35 even at the time of his giving evidence. He also denies he ever went along with Adirajappa to Holalu to work in the elections. Admittedly he belongs to a different village called Arasanahal. It is elicited in his cross-examination that in the District Board Elections himself and the petitioner supported different candidates. Whether that would suffice to be a ground for his bribing any voters on behalf of R. 1 would be a doubtful matter, R.Ws. 14 to 16 and 37 have all given evidence to the effect that several meetings were addressed at Holalu by the Congress party and that there was support for the Congress at that place. R.W. 14 further deposed that the Congress Committees as well as the 1st respondent gave instructions to them that they should work peacefully and should not resort to bribes etc., R.W. 14 is a person paying Rs. 50 land revenue. The suggestion made against him is that he belongs to the Sadar subject and that he was sent to Holalu because there were sadars and because he could influence them. He admitted that he is a sadar but denied the other suggestion. R.W. 17 is a member of the Taluk Congress Committee and he says he worked on behalf of the Congress and went to several places including Holalu. He also speaks about the meeting at Holalu where there was stone-throwing. He says that there was support for the Congress at that place. R.W. 18 is a member of the District Congress Committee and also of the District Board and pays Rs. 500 land revenue to the Government. He says that he worked on behalf of Congress. He also speaks about the meeting in Holalu and about the stone-throwing. He deposed that P.W. 34 was working for the petitioner and not for the 1st respondent. R.W. 37 speaks about the canvassing in several places and the meetings held in places including Holalu and he also spoke about the alleged stone-throwing by the petitioner's party in order to spoil the meeting and he says that there was support for the Congress in that village.

96. R.Ws. 11, 14 to 16 and 37 are all Lingayats and some of them are even *jangams*. In so far as they have given evidence in favour of the 1st respondent, it appears to us that it is entitled to very great weight.

97. So far as the alleged bribing in Holalu is concerned, P.W. 35, the receiver of the bribe is in the position of an accomplice but unlike the case of Neelgonda there is the oral evidence of P.W. 31 for the purpose of corroborating P.W. 35. The question therefore is how far P.W. 31 can be believed, and after giving our best consideration we do not think that it is entitled to weight. He started with the case that there was a sort of general bribing in Holalu which was not even put forth in the petition. The evidence of the several R.Ws. to the effect that the Congress had support to some extent in Holalu village almost completely takes away the foundation of the petitioner's case which as I said is that because there was no support for 1st respondent in Holalu he resorted to bribe giving. On the whole we are not prepared to believe the case of the petitioner on this point.

98. *Gundagathi and Machihalli*.—This relates to Items 9 to 12 of list II and Items 5 to 9 of List II-A. The particulars given in these lists are to the effect that one Reddi Basalingana Gowd, village Munsif of Gundagathi gave the bribes shown therein on behalf of the 1st respondent.

99. There is only one witness examined to prove the facts alleged in this behalf and that witness is P.W. 13. On the other side a number of witnesses R.Ws. 2 and 21 to 25 have been examined. P.W. 13 is the person that spoke about so many other matters including the throwing of dust and sand in the face of the voters



and about the transference of votes by the presiding officer from one box to another etc. According to this witness he saw, one day before the election, i.e. on 1st January 1952 at 7 or 8 P.M. Basalingana Gowd giving Rs. 10 into the hands of Vadra Hanumappa (item 5 of list II-A) and asking him that he should bring the voters next day and get their votes polled. He deposed that this money was paid near the shop of one Bennehalli Revappa in Gundagathi. He says that he was in the shop when the money was paid. He also deposed that when he was returning from that shop he saw Basalinganagowd giving Rs. 15 to one Hanumappa (item 6 of list II-A), Rs. 10 to Pakkirappa (item 7 of list II-A), and Rs. 10 to P. Kamappa (item 8 of list II-A) and told them that it was for the tiffin expenses of themselves and the voters of their localities. Thus he has deposed about items 5 to 8 in list II-A. He has not given any evidence either about 9 of list II-A or about items 9 to 12 of list II. We have already discussed the evidence of this witness in connection with the facts spoken to by him about the partiality of the presiding officer and about the things that are said to have taken place at Machihalli polling station. He says in his cross-examination that he saw the petitioner only one month after the election and even at that time he told him what took place at Machihalli but not what took place at Gundagathi. That means to say he did not speak about the above mentioned bribes. He was questioned whether he informed any others about what took place at Gundagathi and Machihalli but he says that he did not inform anybody else. This Basalingana Gowd who is said to have given the bribes is the village Munsif. He is the 1st cousin of the witness. It was suggested against him that they were not on speaking terms, but he deposed that they were on speaking terms. We have already stated that according to the witness the bribing was between 7 and 8 P.M. In the course of cross-examination when questioned about it he deposed that it was not in the shop of Revappa but on the road in front of the shop that these payments were made. However he says that it was not dark and that it was lighting time, and that he heard clearly what they were talking and he also saw the amounts being paid.

100. R.W. 2 has denied the alleged bribes and he also deposed that he never instructed Reddi Basalingana Gowd to give any such bribes. On the other hand he deposed that Reddi Basalingana Gowd was not his worker at all. R.W. 21 is Basalingana Gowd himself and he denies having worked on behalf of the 1st respondent or on behalf of anybody. The evidence of this witness was also referred to in connection with the alleged irregularities at Machihalli Polling Station. We have referred at that time to the motive alleged by this witness for the petitioner implicating him in all these things. He says that it was because he did not give financial help to the petitioner in the matter of filing this election petition that such things are alleged against him. R.Ws. 22, 23, 24 and 25 are the alleged bribe takers and all of them in a voice deny having received the bribes.

101. We are not able to see sufficient reason to believe P.W. 13 or to disbelieve the evidence of R.Ws. 21 to 25. We find that none of the items mentioned in lists II and II-A have been made out. We are also not satisfied that even if any bribes were given by Basava Reddi or Basalingana Gowd the same thing was done with the knowledge or connivance of the 1st respondent or any of his agents. All these issues are found against the petitioner.

102. *Issues 7 to 7(c).*—These issues relate to the alleged votes cast as a result of the impersonation of dead voters. List III gives the number of polling stations constituted in Harpanahalli at which the alleged impersonation is said to have been practised. When it came to a question of evidence, the village munsif of Harpanahalli was put in the box as P.W. 16 in order to prove merely the death register of Harpanahalli. On that day he was not fully examined and at the request of the petitioner's Advocate his evidence was adjourned to the next day viz., 29th November 1952. On 28th November 1952 itself later in the day one Setra Sivappa was examined as P.W. 22 apparently for the purpose of proving the death of some of the voters in the voters' list and also that some other persons impersonated and voted for them. While the witness proved the deaths of three persons before the election, he stated that he did not know if anybody voted in their names, and to a further question put to him, he answered that though the 1st respondent and others were going to the houses of voters they did not ask that votes should be cast on behalf of dead people. On 29th November 1952 the petitioner's Advocate filed a memo to the effect that he has no further evidence regarding the impersonation of dead persons and that he did not want to further examine the village munsif (P.W. 16).

103. Thus there is absolutely no material either as regards the question as to whether all the persons mentioned in list III are dead or on the question whether any votes were cast in their names and if so as to who impersonated those dead voters. Issue 7(a) has therefore to be found in the negative and issues 7(b) and (c) do not arise for consideration.

104. *Issues 8(a) and (b) and Issues No. 10 to 10(c).*—These two sets of issues relate to the alleged irregularities committed by the Returning Officer in the matter of counting of votes. Paragraphs 13 to 15 of the petition are covered by issues 8(a) and (b) and paragraph 17 is covered by issues 10 to 10(e). In paragraph 13 it is alleged that the Returning Officer engaged nearly 40 clerks for his assistance, that several boxes were being opened simultaneously and counting was going on by several people at the same time. Then it is stated "The petitioner submits that there have been serious irregularities in the counting of votes and that it has also materially affected the result of the election." From this paragraph nothing can be gathered as regards the nature of irregularities complained of and the only complaint can be taken to be that several boxes were being opened simultaneously and counting was going on by several people. With regard to this matter the only witness examined on the petitioner's side is P.W. 1 who happens to be the 3rd respondent in this case and who is also an Advocate practising at Harpanahalli and who is said to have acted as the counting agent of the petitioner. He swore that six boxes used to be brought at a time to the Returning Officer's table. In the course of cross-examination he deposed that there were a number of Tahsildars and Deputy Tahsildars at the time of counting and that one Tahsildar or Deputy Tahsildar was in charge of each table and that there were 4 or 5 clerks at counting on each table. On the other side the Assistant Returning Officer has been examined as R.W. 36. He was the Taluk Supply Officer at Hospet at the time of last elections and was appointed as the Assistant Returning Officer. His duty was to tabulate the result of each box as it was being counted. He deposed that about 25 clerks were engaged and for every 4 clerks there was a supervisor of the grade of a Tahsildar and a Deputy Tahsildar and there were six supervisors. The Returning Officer was throughout present.

105. As regards the allegation that several boxes were being opened at the same time, even P.W. 1 does not seem to refer to it in his evidence unless it can be implied from his statement that about six boxes used to be brought at a time to the Returning Officer's table. According to the evidence of R.W. 36 one box after another was opened. There is nothing in the rules framed under the Representation of the People Act that not more than one box can be counted at a time. If that was the intention of the Legislature, we have no doubt that that would have been expressed very clearly. No rule is pointed out by the petitioner's Advocate to show that the counting of more boxes than one at a time is open to question. Therefore it appears to us that there is nothing substantial in the charge alleged in paragraph 13 and it should be held that no irregularity was committed in the matter of opening the boxes and counting them.

106. In paragraph 14 it is alleged that in respect of many ballot boxes the paper seals intended to seal the boxes outside were actually found inside the ballot boxes and sometimes without even the initials or signatures of both the concerned presiding officers and the polling agents. It is further alleged that when objections were made before the Returning Officer by the petitioner, the Returning Officer did not take notice of the same and merely said that it was due to the ignorance of the presiding officers who were drawn newly from the Tungabhadra Project area. On the question as to whether there were any boxes with paper seals found inside them or the paper labels without the initials or signatures of the presiding officers and polling agents, the only evidence consists of that of P.W. 1 and P.W. 24 on the petitioner's side. P.W. 1 deposed that in some boxes the paper seals were found intact inside either over or below the ballot papers and that in some the signature of the presiding officers and the polling agents were not found. He also stated that in some boxes cigarette paper instead of the official paper supplied was used for paper seal. In cross-examination his attention was drawn to Rule 46(3) which required the Returning Officer allowing the candidates and their election agents and counting agents present at the counting an opportunity to inspect the ballot boxes and their seals to satisfy themselves that they are in order. The witness answered that he had inspected the ballot boxes but was not satisfied that the seals were in order. At the same time he deposed that he did not make any written representation to the Returning Officer and that he made only oral representations. According to him the Returning Officer replied that the defect was patent and thereupon he was satisfied. He stated that he did not make any note of the box in respect of which the Presiding Officer's signatures were not found on the paper seals and he cannot give their particulars. With regard to the polling agents' signatures, he seems to be of opinion that they should be on every paper seal, but the rules do not compel polling agents to put their signatures on the paper seals. Even with regard to this there is no definite material as to the number of cases in which the signatures of the polling agents were not found. R.W. 36 deposed in his evidence that the boxes were shown to the agents before they were passed on for counting and that the seals of the boxes were intact. According to him the complaint that was made at the time of counting was that symbols pasted on the ballot boxes had fallen in some cases. He definitely swore

that the Returning Officer showed that the boxes were intact and that the agents were satisfied and that no other objections were raised. There was practically no cross-examination on this part of the case.

107. Assuming that paper seals were found inside the boxes, it does not necessarily follow that there was tampering. The falling of papers into the boxes might in all probability be due to negligent or inefficient manner in which they were affixed in the beginning. Apart from the paper seals there would be other seals for the purpose of sealing the box. Unless it is shown that those seals had been tampered with, it is impossible to argue that the boxes had been tampered with and unless it is proved that the boxes had been tampered with, the mere fact that the paper labels were not properly affixed or that they fell into the boxes serves no purpose whatever.

108. Paragraph 15 of the petition states that counting of votes was continued after light failed and even without lights for sometime. It is an absolutely vague allegation and no attempt was ever made to substantiate it. The Tribunal feels that it is a flimsy type of allegation not worth any consideration.

109. In paragraph 17 it is contended that the petitioner having suspected serious irregularities put in a petition before the Returning Officer for recounting at least 5 or 6 boxes as a test case, that the 1st respondent's election agent filed a counter petition to the effect that the Returning Officer should not recount any box and that the Returning Officer passed an order that he would count only one box. Thereupon the petitioner selected one ballot box of the 1st respondent and on a recount it was found it contained 15 invalid votes which had passed off for valid votes. It is contended in paragraph 18 that in view of the above, the Returning Officer should have in the interests of justice made a recount of all the boxes and that the refusal even to count 5 or 6 boxes was *mala fide*. Thus the whole case of the petitioner proceeds upon the footing that he had asked for the counting of 5 or 6 boxes and that the counting of only one box was allowed. The petition filed by the petitioner has been marked as Ex. A-1. In that petition it was recited that while counting the boxes relating to the polling station No. 41(1) it was found that wrong ballots were found in the box of the first candidate and that there may be wrong ballots in the box of the other candidate also and therefore in the interests of justice the ballots in 41(1) and 41(2) must be recounted to find out the invalid votes if any. It will be seen that the petition is not based on any general irregularity and there is no prayer whatever to count 5 or 6 boxes. There is a definite prayer for recounting the ballots in 41(1) and 41(2) and this is based on the ground that when counting the first candidate's box relating to 41(1) invalid ballot papers were found there and that there was a likelihood of such papers remaining in the box of the other candidate also. Thus the case sought to be made out in the petition is different from the case put forward in Ex. A-1. Ex. A-1 does not show that any objection was filed by the 1st respondent. It merely contains an order 'Recount ordered'. P.W. 1 in his evidence after referring to Ex. A-1 states that after the disposal of the petition Ex. A-1 and the recounting in pursuance of the same, the petitioner asked for a recount of half a dozen boxes. There is nothing in the petition to the effect that any further recount was asked for after orders were passed on Ex. A-1. P.W. 24's evidence is to the effect that after recount was made as ordered in Ex. A-1, he did not make any further request though he gives his own reasons for it. R.W. 36 swore that apart from the petition Ex. A-1 no representations were made orally for any purpose to the Returning Officer. He also deposed that there were parliamentary ballot papers found in the assembly boxes and all of them were treated as invalid votes.

110. So far as recount by the Returning Officer is concerned the provision is contained in Rule 48 proviso which says "provided that upon the application of any candidate or his election or counting agent in that behalf a total or partial recount shall be made before the Returning Officer makes the declaration, but the Returning Officer may reject any such application as may appear to him to be frivolous or unreasonable recording at the same time the grounds for such rejection." It will be seen from this proviso that a recount can be had under proper circumstances only upon application of a candidate or his agent and the Returning Officer has got a discretion in allowing or disallowing a recount. In this particular case the recount asked for expressly in Ex. A-1 was ordered. It is impossible to believe that the petitioner would have made an oral representation apart from what was contained in the written representation. We do not see any reason to give greater weight to the evidence of P.Ws. 1 and 24 on this aspect of the matter rather than to that of R.W. 36. We find on issue 8(a) that no irregularities were committed in the counting of votes and on issue 10(a) that there is no refusal on the part of the Returning Officer to recount any ballot papers. The other issues do not arise for consideration.

111. *Issues 9(a) and (b).*—With regard to a particular polling station going by name Kanchikeri polling station intended for Hallikeri and Sathuru voters, it is alleged that 383 votes were put upon the notice board as having been polled in the men's booth at the end of the polling day, but at the time of counting, the number of votes counted from the men's booth was 419 i.e., 36 votes in excess of the votes actually recorded. There is no allegation in that paragraph that any malpractice was practised during the transit of the box from the polling station to the returning office or in any other way. Curiously enough the inference sought to be drawn from the above is stated in the petition as follows:—

"This will clearly show that serious irregularities have taken place during the counting which has materially affected the result of the election".

112. With regard to this the petitioner has filed on his behalf Exs. A-11 to A-13. Ex. A-11 is a portion of form No. 14 relating to Kanchikeri so far as the petitioner is concerned. Ex. A-12 is part of similar form No. 14 relating to Kanchikeri so far as the 1st respondent is concerned. These two documents show that there were 4 polling booths in the name of Kanchikeri, Nos. 120, 121, 122 and 123. The petitioner secured 339, 259, 356 and 173 respectively and the 1st respondent secured 40, 118, 63 and 34 respectively. It is not clear from Ex. A-11 and A-12 which booth is referred to as comprising Hallikeri and Sathuru voters. But we find that in the case of booth No. 122 if the votes are added up for both the candidates it would come to 419 i.e., 356 plus 63. But form No. 10 with regard to booth No. 123 has been marked as Ex. A-13. According to that form the ballot papers received by the presiding officer were from 770401 to 770900 i.e. 500. The unused ballot papers returned were from 770677 to 900 showing thereby the used ballot papers must be from 770401 to 770676 which comes to 276, and out of these 68 are shown as having been cancelled and the number of ballot papers in the ballot box is shown as 188. 188 plus 68 would come to 256. It is not understood how the figures can be reconciled. There is apparently some mistake. But what we fail to see is how Ex. A-13 has any bearing on the allegations in paragraph 16 of the petition. As we stated already, it is only booth No. 122 that can correspond to 419 as pleaded by the petitioner in his petition, and not booth No. 123 to which Ex. A-13 relates.

113. P.W. 32 states that he was the polling agent at Kanchikeri station meant for Hellikeri and Sathuru voters and that after the close of the poll, the total number of votes polled was put up on a black-board by the presiding officer and that it was written as 383 males and 271 females. He further says that he had to go to Harpanahalli at the time of counting and that he was told that the total votes counted were 419 and 209 respectively and that there were 60 invalid votes. The noting down of numbers on a notice board is not contemplated by any rule in the rules framed under the Act. There is nothing to show that the memory of P.W. 32 would be so exact as to show the number that was put on the notice board. He says he was ticking off the numbers of the persons that had votes in his voters' list and that that tallied with the number on the notice board but that list has not been produced. Form 10 relating to this booth which must be the best evidence as to how many voters actually polled at that place is not before the court. It would appear that several records relating to this constituency had been stolen and that is said to be one of them. There is no material from which it can be judged that the votes counted were more than those actually polled. There is no evidence that the Kanchikeri boxes were found tampered with.

114. At the time of arguments Mr. Satyavantha Rao for the petitioner practically gave up arguing this part of the case and he stated that there was no use pursuing that topic. All these issues are found against the petitioner.

115. *Issue 11.*—This issue relates to the allegations made in paragraph 19 of the petition. It is alleged in that paragraph that parliamentary ballot papers were issued at Bachigondanahalli polling station No. 9 in the beginning and that it was only after sometime when the petitioner's polling agent objected that assembly ballot papers were given. It is further alleged that in the counting of votes from this particular booth as many as 71 votes were invalidated from the box of the petitioner in the men's booth on the ground of there being parliamentary ballot papers for no fault of the petitioner. The presiding officer with regard to Bachigondanahalli who was examined as R.W. 28 denies that he issued parliamentary ballot papers for assembly voters. It is however seen from Ex. B-3 and B-4 that many ballot papers were invalidated on the ground that they were unauthorised. In the petition there is no allegation that such papers were not found in the 1st respondent's box also or that they were not invalidated. During the trial it was sought to be contended that such ballot papers were not invalidated with regard to the 1st respondent and an argument was sought to be put forward that the counting was not done properly. But it appears from Ex. B-4 that

several such ballot papers were invalidated as unauthorised even with regard to the 1st respondent. Apart from it the difference between the petitioner and the 1st respondent is 1164. It is not proved that there would be any difference in the result even if all the votes invalidated on the ground mentioned in the petition in respect of this Bachigondanahalli station are counted for him. This issue is found against the petitioner.

116. Issue 12.—Paragraphs 20 to 23 of the petition relate to what was being styled by both sides as official interference in the matter of election. Paragraph 20 relates to one S. Mallappa, the Assistant Presiding Officer at Magalam and a Revenue Inspector and it is alleged that he was openly canvassing for the 1st respondent within the booth premises. Paragraph 21 relates to a Revenue Inspector by name S. V. Achar canvassing for the 1st respondent in the village Gundagathl which had more than 400 voters. Paragraph 22 relates to the presiding officer at Hampasagar polling station and it is alleged that he canvassed for votes within the premises of the booth and also interchanged the position of the boxes during the course of the poll and kept the petitioner's box with the symbol turned away from the voters and the slit of the box of the petitioner was found locked with ballot papers. Paragraph 23 relates to the presiding officer at Machihalli and it is alleged that he was canvassing for 1st respondent within the booth and was also encouraging and helping Hanumana Gowd, the agent of the 1st respondent. It is in this connection that the issue of marked white slips permitting the agents of 1st respondent to distribute slips to voters, the alleged throwing of mud and sand and pushing back the crowd etc. are referred to.

117. As the issue reads the contention of the petitioner should be considered to be that the officials mentioned in paragraphs 20 to 23 were guilty of either irregularities or corrupt practices. The exact distinction between these two aspects was not brought out in the course of arguments, but the nature of the allegations show that if they are true there must be some corrupt motive on the part of the officials concerned. However that may be the only corrupt practice that has been brought to the notice of the Tribunal so far as these acts are concerned is that covered by Section 123(8) which runs as follows:— "The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or by any other person with the connivance of a candidate or his agent any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than giving of vote by such person." This corrupt practice apparently is on the part of the person who obtains or procures the assistance of the Government servant. If that be so the corrupt practice should be on the part of either the candidate or his agents. Even under Section 124 what has been constituted a minor corrupt practice is "Any act specified in clauses 1 to 8 of section 123 when done by a person who is not a candidate or his agent or a person acting with the connivance of the candidate or his agent." It is difficult to understand how the officers themselves can be brought either under Section 123(8) or under Section 124(1) as being persons guilty of the corrupt practices mentioned therein. If what they have done amounts to an offence under the electoral law or under any other law then they would have to be prosecuted for the same. Otherwise they may have to be departmentally dealt. Whatever that may be, there is no question of any corrupt practice on the part of the officers.

118. So far as Mallappa, the Revenue Inspector of Magalam is concerned, P.Ws. 24 and 39 to 41, 62 and 64 have given evidence. P.W. 24 is the petitioner. He does not say that he is personally aware of any canvassing by Mallappa at the time of his acting as the Assistant Presiding Officer. P.Ws. 39 and 40 are two ladies who deposed that Mallappa after issuing ballot papers to them went behind them and stated "Give the vote to Basavanna". The word 'Basavanna' is said to mean 'bull' and it is contended that the exhortation by Mallappa was to ask them to vote for the 1st respondent who was a Congress candidate. These two ladies state that they went and told one Veeranna Gowd who was sitting in a temple called Vudichamma temple and issuing chits there. P.W. 41 is the said Veeranna Gowd and he states that while he was sitting at the Vudichamma temple and issuing chits to voters, these two ladies and the husband of P.W. 39 came and told him about what took place and that he wrote an *arji* and gave it to the presiding officer. Mallappa as R.W. 1 has denied that he has done anything as alleged by P.Ws. 39 to 41. So far as P.Ws. 39 and 40 are concerned they were not cited in any of the witness lists and they were brought for the occasion. We referred to the evidence of P.W. 41 to the effect that he presented a petition to the presiding officer. No attempt was made to summon for any such petition from the records relating to the election. R.W. 1 Mallappa as well as R.W. 4 who was the Presiding Officer at Magalam deposed that no such *arji*

was ever given by P.W. 41. R.W. 4 further states that R.W. 1 was not canvassing support for anybody in the polling booth. Having regard to the evidence of R.Ws. 1 and 4, who deny that any petition was filed and having regard to the further fact that no such petition has been summoned for it appears to us that the evidence of P.Ws. 39 and 40 who are themselves unsummoned witnesses is not entitled to any weight as against that of R.Ws. 1 and 4.

119. P.W. 62 does not speak about anything that took place at the Magalam polling booth. He deposed altogether to different set of facts. He says that he came to know even before the election that Mallappa was canvassing for the 1st respondent and that he also attended a meeting said to have been held by the said Mallappa in the students' home at Hadagalli at which the 1st respondent is said to have attended and presided. He further deposed that he told about this to Sri Mahabaleswarappa, the President of the District Board and Sri Mahabaleswarappa, told him that he would send a telegram to Mallappa. P.W. 64 Mahabaleswarappa deposed that he came to know from some Hadagalli workers about the interference by Mallappa and another Shukkur, both of whom were Revenue Inspectors in Hadagalli taluk. He sent telegrams to them not to interfere in the elections. He further deposed that so far as Shukkur was concerned he sent a reply to the effect that he knew rules and that he was not interfering. P.W. 64 further says "Having sent the telegram I thought they would be careful and did not think any further action necessary". R.W. 1 Mallappa admits having received a telegram from Mahabaleswarappa (P.W. 64) but he deposed that that was about 20 days before the polling took place and that he sent a reply. He says that he did not maintain a copy of the reply and according to him he stated that he was not participating in the elections. Because P.W. 64 does not refer to any reply received from R.W. 1 the question as to whether R.W. 1 really sent a reply may be a matter for doubt because when P.W. 64 is able to remember the reply received from Shukkur, it is unlikely that he would not be able to remember the reply received from R.W. 1.

120. As against the evidence of P.W. 62 we have not only the evidence of R.W. 1 but also the evidence of R.W. 2 to the effect that no such meeting was organised by R.W. 1, or addressed by R.W. 2. P.W. 62 states that he is the President of the Co-operative Stores and that he worked for petitioner and Mahabaleswarappa in the elections. He is one of the witnesses who spoke about the disfranchisement of voters at Sogi and after discussing the evidence on that point we have come to the decision that his evidence cannot be believed. We also indicated that his own son-in-law was given employment by Angadi Chennabasappa in the Co-operative Society.

121. Apart from the above, the only allegation in the petition against Mallappa is as regards what took place at the polling booth on the election day, and there is no other allegation against him. It appears from the evidence that Mallappa's brother who is not in Government service was helping the Congress candidate. It is quite probable that P. W. 62 might have mistaken the canvassing on the part of Mallappa's brother to be by R. W. 1 or it may even be that in order to prevent R.W. 1's brother from canvassing for the Congress candidate threats were held out against R. W. 1 by way of saying that he was canvassing support for one of the candidates in the election. Whether this be correct or not it appears to us that no consideration need be given for the allegations in this behalf especially when the same were not alleged in the petition. It appears to us that even if there was any canvassing by R. W. 1 it was never considered to be of any importance as to deserve mention in the petition.

122. So far as S. V. Achar is concerned, there is only one witness examined and that is P.W. 14. P.W. 14, is the karnam of Gundagathi and he has deposed that S. V. Achar went to his village on 20th December, 1951, for inspection of lands and that he was camping in the Basaveswara temple and told the village munsif and the witness that they should help the Congress and that they should encourage the voters to place their votes in the 'bulls' box. The witness says that he replied that they being Government servants were forbidden from taking part in the elections. Then the Revenue Inspector replied that there was nothing wrong in helping the Congress party and that if anybody was to take action it was only he and the Tahsildar and that they were not going to take it. The witness says that he replied that it was not possible for him to work because he did not want to incur the displeasure and enmity of the villagers. According to him the Revenue Inspector then replied that in such a case the witness should not work at all and that the village munsif would work. According to the witness the village munsif worked for the 1st respondent. In the course of cross-examination it was elicited that he never reported anything about this to the Tahsildar and it was only 20 days after the elections that he told this to the petitioner.

According to him only the village munsif and himself were present when the Revenue Inspector asked them to help the Congress. It was elicited from him that his sister is married to the father-in-law of the petitioner. The evidence is thus highly interested evidence. On the other side the village munsif has been examined as R.W. 21 and the Revenue Inspector as R.W. 35. Both these have flatly denied all that is spoken to by P.W. 14. It may be noticed that several other allegations about bribery etc. were made against R.W. 21 and in dealing with the bribery charge we have referred to the evidence of R.W. 21 as regards the motive for the petitioner trying to bring in the name of R.W. 21 into all these things. R.W. 35 says that he belongs to Bellary town, that he was new to Harpanahalli taluk and that he had no leanings towards anybody and did not work for anybody. R.W. 21's evidence shows that there were disputes between him and P.W. 14 and that they are not on good terms. That portion of his evidence was not even cross-examined. On the other hand support therefor is available from the fact that in the course of cross-examination, a distinction was drawn between the several sects to which P.W. 14 and R.W. 21 belonged, the former being a panchachar and the latter being a sadar. We are not prepared to believe the evidence of P.W. 14 in preference to that of R.Ws. 21 and 35.

123. The Presiding Officer at Hampasagar is R.W. 32. The evidence so far as he is concerned consists of that of P.Ws. 24, 44 and 45. P.W. 24 is the petitioner and he says that he received information while he was at Hadagalli that the Presiding Officer had interchanged the position of the boxes and also that the box of the petitioner was so turned as not to make the symbol 'bow and arrow' seen by the voters. He says that he also learnt that the presiding officer was invariably following the women voters into the booth and asking them to put their ballot papers in the box with the bulls symbol. According to him he went to Hampasagar and in spite of his protests the presiding officer did not allow him to go and see inside but only pacified him by saying that he would not any longer go with the women voters and encourage them to vote in any particular way. According to P.W. 24, the Revenue Divisional Officer came there about half an hour later and thereupon he made a complaint of this to the Revenue Divisional Officer orally. The Revenue Divisional Officer went into the booth and found the position of the box misplaced in the women's booth and questioned the presiding officer and directed him to replace them correctly and went away telling the petitioner that he set right the whole thing.

124. P.W. 44 deposes that he was the polling agent of the petitioner at Hampasagar and that about 9 or 9-30 A.M. the persons to whom he gave slips and to whom he stated that the first box was the petitioner's box came and told him that the symbol on the first box was bulls and that the symbol of bow and arrow were not found on the second box. He says that he told the petitioner's agent Siddappa and asked him to tell the Presiding Officer. That man told the presiding officer but the same state of affairs continued till 2 P.M. when the petitioner came and they informed this to the petitioner. He also speaks about the Revenue Divisional Officer coming to the place. He says that he was told by the voters that the position of the box was set right. In the course of cross-examination he deposed that he does not remember the names of the persons that came and told him at 9-30 A.M. and that only one man told him like that. P.W. 45 is Siddappa whose name is referred to in the evidence of P.W. 44. He speaks about P.W. 44 telling him at about 10 A.M. about the interchange of boxes and about the absence of the symbol and about his telling the petitioner at about 1 P.M. He also deposed about the Revenue Divisional Officer coming and going inside and setting the matters right. He says that he also went along with them inside and saw and that he did not find the arrow and bow symbol visible on the box. This witness also deposes about the presiding officer going into the booth following the voters at an interval of 2 or 3 voters and they asked him not to do so and he snubbed them. He does not say that he heard the Presiding Officer asking the women voters to vote in any particular way and we may state in this connection that P.W. 44 too does not give any evidence about that matter.

125. Exhibit A-10 purports to be a copy of a petition given by the petitioner to the Presiding Officer on the election day and mentioning the several things that are said to have taken place between him and the Presiding Officer. The original of this does not appear to have been summoned for and this document was produced into court only on 12th September, 1952, long after the written statement itself was filed.

126. R.W. 32 is a native of East Godavari district and at the time of elections he was Land Acquisition Deputy Collector at Adoni. There is nothing alleged to show that he has anything to do with the 1st respondent, and his own sworn

testimony is that he did not know the 1st respondent. In the circumstances it passes one's comprehension why he should think of canvassing for the 1st respondent. He says that he does not even know the language of the place. He denies that he interchanged the position of the boxes and as a matter of fact there is really no positive testimony that he interchanged them. According to his evidence some representations were made and the petitioner wanted to go inside and see but, the witness told him that he could not permit him to go inside. After the Revenue Divisional Officer came he was told about it and the Revenue Divisional Officer went inside and came back and informed the candidate that the arrangement was in order. Thereupon the candidate and the Revenue Divisional Officer left the station. The evidence of P.Ws. 24 and 44 and 45 that the Revenue Divisional Officer found that the position of the box was wrong or that he then corrected the position is all denied by the witness. No question was put to this witness as regards the petition Ex. A-10.

127. Having regard to the absence of any motive for R.W. 32 to interchange the position of the boxes, it is difficult for us to believe that he would have done so. The case of the petitioner is not that from the beginning the boxes were in wrong places. But his case is that originally they were in correct position and that sometime in the middle the position of the boxes was changed. Such a state of affairs appears to be altogether incredible and we are unable to believe the same.

128. So far as Machihalli is concerned, the evidence has already been discussed in connection with the alleged prevention of voters and there is nothing to add to the said discussion. For the reasons already given when dealing with that matter we hold that the evidence of P.W. 13 and P.Ws. 28 and 29 on this aspect also cannot be believed. This issue is found against the petitioner.

129. Issues 13, 14, 15(a) and (b).—It is necessary to consider all these issues together because the ultimate contention of the petitioner as a result of the contentions covered by these issues is that the return of the election expenses filed by the 1st respondent is false in material particulars and he further wants to make out that the result of the election has been materially affected thereby.

130. One part of the petitioner's case is that the 1st respondent has borrowed large sums of money from various persons for election expenses, that the said borrowings are far in excess of the election expenses allowed by the Act and that they have not been disclosed. This part of the case is found in paragraphs 25 and 27 of the petition. The next contention of the petitioner is more or less by way of particularisation of the falsehood of the return regarding election expenses and that is found in paragraph 28 where it is said that 11 motor vans and jeeps were used by the 1st respondent and that no amount is shown either for the purchase of those vans or for the hiring of those vans or even the value of services for the use of these vans.

131. Under Schedule V of Annexure to the Rules framed under the Representation of the People Act, the maximum amount of election expenses which a candidate for the Assembly in the Madras State can incur is Rs. 8,000. The return of election expenses which has been filed by the 1st respondent and which has been marked as Ex. B-1 shows an expenditure of Rs. 4,896-3-3.

132. Under Section 124(4) "The making of any return of election expenses which is false in any material particular or the making a declaration verifying any such return" is a minor corrupt practice. In the case of a minor corrupt practice under Section 100(2) (a) it is provided "Subject to the provisions of subsection (3) if the Tribunal is of opinion that the election of a returned candidate has been procured or induced or the result of the election has been materially affected by any corrupt or illegal practice or etc.....the Tribunal shall declare the election of the returned candidate to be void". So far as the contentions of the petitioner are concerned, they are firstly that the election expenses exceeded the maximum limit and secondly that the return is false.

133. Dealing with the question of the alleged borrowing, the petitioner has given list No. V as showing the names of persons from whom the 1st respondent borrowed moneys. No attempt has been made to prove that any moneys were borrowed from the persons mentioned in items 2 to 4 in that list. So far as item 1 is concerned a very feeble attempt was made and it was conceded at the time of arguments by M. Satyavanta Rao that he has not made out even the said alleged borrowing.



134. As has already been indicated, the falsehood of the return is alleged on account of the user of certain motor vans and jeeps and neither the cost nor the expenditure having been shown in the return of election expenses.

135. In the beginning no particulars were furnished as regards the 11 motor vans and jeeps said to have been used by the 1st respondent. On a direction from the Tribunal a memo of particulars was furnished on 8th September, 1952, giving the particulars of the vehicles and in some cases the names of owners also. Thereupon the 1st respondent was asked to file an additional counter and he filed an additional counter on 15th September, 1952.

136. According to the evidence of P.W. 3, the owner of vehicle item No. 1 is said to be one H. Kotrappa and the owner of item 2 is said to be one M. Basappa. The owner of vehicle 5 is said to be one N. Chennabasappa and that of vehicle No. 6 is said to be one Baramana Gowd. The owner of item 7 is said to be one Gul Muhammad and in the memo of particulars, the name of the owner of the vehicle, item 11, is mentioned as one Abdul Khader, a retired Inspector of Police. None of these people are examined on the petitioner's side. One Rangappa who it is alleged is the driver of vehicle (item 2) was examined on the respondent's side as R.W. 20. The owner of vehicle No. 6 viz., Baramana Gowd has been examined on the respondent's side as R.W. 26.

137. Though a number of witnesses were examined on the side of the petitioner, it is seen that their evidence is of a very general character and is to the effect that a number of jeeps, cars, and vans totalling to 10, 11 or 12 were being used for the purpose of canvassing on behalf of the 1st respondent. Except P.Ws. 23, 24, 36 and 62, the evidence of the other witnesses is not of very great value because of its general nature. P.W. 23 states that he is a motor driver and that he owns the cars and that the vehicles of Chennabasappa and Gul Muhammad were being used by the 1st respondent, and that the 1st respondent took them on hire. He also speaks about vehicles (items 1 and 2), as being those of Kotrappa and Basappa. With regard to items 1 and 2 he says his brother Kotrappa and one Ranebennur Thippanna, brought them on hire from the owners on behalf of the 1st respondent. With regard to items 1 and 2, all that he says is that one Rangappa was the driver of the car and that that Rangappa is now in the service of Kristachar. As we indicated already, he has been examined as R.W. 20. As regards his knowledge as to how he could say that these cars were being used, he stated that because the owners of those cars were his friends and because they told him that they had come in connection with the elections he knew that the cars were used. That evidence is naturally not enough to show that they were taken on hire by the 1st respondent or that the 1st respondent used them. He speaks of some accident which the car belonging to Basappa had, and about his supplying a tyre to Chennabasappa's car i.e. item No. 5 and also another tyre to Gul Muhammad's car i.e. item 7. In another portion of his evidence he says that these vans, jeeps and cars were being kept near the 1st respondent's house and they were going out and coming that he was also seeing petrol drums in front of 1st respondent's house. He admits in cross-examination that he was a polling agent on behalf of the petitioner and that he is a disciple of P.W. 19, who is said to be his priest. P.Ws. 19 and 21, also stood surety for him and got a loan of Rs. 500 as late as on 10th November, 1952. He deposed that Gul Muhammad does not have the C certificate in his name and that he has also no licence for plying a taxi. With regard to Chennabasappa he says he does not know whether he owns a licence to ply a taxi.

138. P.W. 24 is the petitioner himself and he states the names of the owners of cars which were alleged to have been used by the workers on behalf of the 1st respondent. But he himself deposed that the Congress has set up candidates for all the Parliamentary and Assembly Constituencies in the area, that important Congress men like Tekur Subramanyam and Marriswami and even Nijalingappa, President of the Karnataka Prantic Congress Committee, were touring in the area. The cars and vans used by them were carrying Congress flags and Congress placards.

139. P.W. 36 deposed that Baramana Gowd (R.W. 26) had a car bearing No. B.M. Y. 8481 (item 6) and that it was being driven by a driver called Khader Sab and that this was going all round on behalf of the 1st respondent from the time of the scrutiny of the nomination papers till the polling was over. In the course of cross-examination he admitted that Baramana Gowd had no taxi licence for this van, that there was an accident when a person by name Gundappa was driving it and that after that accident there was a police case. The evidence of R.W. 26 is to the effect that after that accident he stopped using the car not only because it required some repairs but also because the police had asked him not

to use it. Whatever that may be, in the face of the admission that the vehicle had no taxi licence it passes one's comprehension as to how Baramana Gowd could hire it as a taxi. P.W. 62, also gave evidence about the user of Baramana Gowd's van on behalf of 1st respondent. He says that he himself offered a rent of Rs. 30/- per day and because Baramana Gowd asked for Rs. 40/- per day, the witness could not get it and subsequently having come to know that the 1st respondent got it at Rs. 30/- rent, he says he questioned Baramana Gowd and Baramana Gowd told him that because the 1st respondent is his relation he gave it. The relationship he refers to is that the 1st respondent's uncle Sridarappa's daughter by concubine is married to Baramana Gowd's son Sridarappa. In another connection, it has been shown that this witness is a highly interested witness in view of his son-in-law being appointed to the Co-operative Society by Angadi Chennabasappa and after all in his cross-examination he says that it is from what Gundappa told him that he came to know that the rent was Rs. 30/- and that he did not enquire Baramana Gowd. He too admits that Baramana Gowd had no taxi licence.

140. The 1st respondent as R.W. 2 has denied the user of the vehicles, items 1, 2, 5 to 7 and 11 and with regard to items 3 and 4 he deposed that they were working for him free of hire and that he was supplying petrol for them. Regarding item 8, he deposed that it belongs to Kristachar and that item 9 belonged to Sethuramachar and item 10 to one Panchakshrayya and that these vehicles were working for him but not for hire, and he was supplying petrol for them. With regard to the vehicle mentioned in paragraph 3 of the memo of particulars also, he denied that it ever worked for him. He also denied the alleged storage of petrol in drums in front of his house. R.W. 10, the owner of item 3 has corroborated the evidence of R.W. 2 and states that he gave it to R.W. 2 free of any hire and that R.W. 2, was putting his own petrol whenever he used it. The only suggestion against this witness is that he has got a cloth shop and that he requires licence for selling mill cloth. It is suggested that he must be under the obligations of the 1st respondent for that reason. R.W. 12 deposed that he worked for the Congress candidates in the election and that his jeep was used by him and the 1st respondent and that he never gave it for hire to the 1st respondent. 1st respondent's petrol only was being used when it was used. R.W. 20 deposed that it was for the petitioner that he used the car in the last elections and not for 1st respondent and he says that he used it for about 10 days. This R.W. 20 is now a driver under Mr. Kristachar and it is suggested that he is giving evidence like that at his instance. R.W. 26 is Baramana Gowd and his evidence has already been referred to. He denies that the vehicle was ever given by him for hire to the 1st respondent or it was ever used by the 1st respondent. It was contended that this van having been purchased for Rs. 8,000 it is unlikely that the witness would have kept it without using from the time of the alleged accident. The witness says that the vehicle required repairs and that he also considered at a bad omen because of the accident and therefore he has not got it repaired and that he was trying to sell it away.

141. In our opinion, there is no clinching evidence to prove that the 1st respondent took the alleged vehicle on hire. We do not see sufficient reasons to disbelieve the oral evidence on the respondent's side or to prefer the oral evidence on the petitioner's side on this aspect of the matter. We do not also find sufficient reasons to believe that vehicles (items 1, 2, 5 to 7 and 11) were used by the 1st respondent.

142. One contention put forward by Mr. Satyavanta Rao on behalf of the petitioner is that though the 1st respondent was not paying any hire or any driver's charges to the five vehicles admitted to have been used by him, he should include moneys in respect of driver's charges and a reasonable hire in the return of election expenses. No authority has been placed before us which would show that in a case of this kind, not merely the petrol charges but even the charges for the drivers and some amount of reasonable hire should be provided for, even though the vehicles have not been hired to the candidate. Apart from it, we fail to see how the non-inclusion of such unpaid or notional expenses would render the return false in any particular. Unless it is proved that the candidate has incurred the expenditure and that he did not show it, it appears to us the return cannot be considered to be false. Even if for any reason it should be held that the probable driver's charges or hire should be included, unless a corrupt motive is shown it is difficult to consider that the return is false. We take it that when the Legislature refers to the making of any return of election expenses which is false in any material particular, it means that the return must be intentionally false and unless it can be shown that the inclusion of this expenditure would have increased the election expenses to anything beyond the maximum limit viz., Rs. 8,000 there is no reason why we should

conclude that the non-inclusion of these charges was done with any corrupt motive or that it was intentionally false or that it has materially affected the result of the election. At page 285 of mathrubhutham's Commentaries on the Representation of the People Act, the learned Author says: "A false return of expenses must be proved to be a deliberately incorrect return. In other words, a corrupt motive must be shown..... Omission from the return of election expenses of admitted items of expenses on account of lack of knowledge or inadvertance of the pleader but without corrupt motive does not render the return false i.e. deliberately incorrect." We find that there is no sufficient material to drive us to a conclusion that the return was deliberately false.

143. It is next contended that the return is otherwise false on account of the following: Exhibit B-2 is the return of election expenses and at page 12 an item of Rs. 2,184-4-0 is shown as the amount paid to one K. J. Balsara in respect of petrol and oil. The voucher number with regard to this is 27-A and that has been marked as Exhibit B-2. The evidence of R.W. 2 and R.W. 39 is that this voucher is a consolidated voucher in respect of the several items of petrol purchased from Balsara from time to time. It is contended that the filing of a consolidated voucher like that does not satisfy the provisions of the Statute and the rules framed thereunder and that in order to shield the actual purchases (with regard to which the petitioner's case is that it would be much more than Rs. 2,184/-) such a voucher has been produced. There is absolutely no evidence that anything more than Rs. 2,184/- worth of petrol and oil were purchased from Balsara. Balsara was summoned by the petitioner and after examining all the bill books of Balsara, he was given up as unnecessary by the petitioner. If the bill books should disclose that the 1st respondent made purchases worth more than Rs. 2,184-4-0 it is absolutely unlikely that the petitioner would have given up examining the witness. That being so, it is not open to the petitioner's advocate to surmise merely because Ex. B-2 is a consolidated voucher and because the several bills constituting this voucher have not been produced. The evidence on the respondent's side is that all these separate bills could not be traced and because the law required a voucher for every item of expenditure, they asked Balsara to give them duplicate bills but instead of doing so, he gave one consolidated voucher and that the respondent thought that that was sufficient. We are unable to see how this aspect of the matter would show that the return of the election expenses is false.

144. Under Sections 44 and 45 of the Representation of the People Act, on account has to be maintained by the election agent. The evidence before the Tribunal is to the effect that one Mr. Raghavendra Rao was the election agent of the 1st respondent, but R.W. 39 was the person that was actually maintaining the accounts. Raghavendra Rao has signed the return of election expenses and the 1st respondent also has signed the same. It is contended that non-maintenance of accounts by Raghavendra Rao is an irregularity but the evidence of R.W. 39 is that he was showing the accounts maintained by him to Raghavendra Rao and that Raghavendra Rao was seeing them. Apparently, what he means is that he was maintaining the accounts as per the directions of Raghavendra Rao. It would appear that the petitioner himself took steps for summoning Raghavendra Rao to produce the books of accounts etc., and Raghavendra Rao filed a memo into court on 4th November 1952 that he did not incur any expenditure and that the 1st respondent also did not spend anything through him and therefore he had no account of any kind to submit. This memo must have been filed by Raghavendra Rao behind the back of the 1st respondent. At any rate, without examining Raghavendra Rao with reference to the recitals in this memo and without getting it marked, no case can be built up by the petitioner on the basis of this memo. Further, the memo does not unequivocally say that no accounts were maintained. In fact the proper person who should have been summoned to produce the account was the 1st respondent himself and it is somewhat strange that the petitioner should have taken out summons to Raghavendra Rao when he was no longer an agent on behalf of the 1st respondent. The whole thing seems to be very shady and we do not think that any inference with regard to the alleged non-maintainability of the account can be based upon this memo.

145. It is next contended that the 1st respondent had incurred some expenditure for the purpose of going to Delhi and Hubli in connection with his being set up by the Congress as a candidate and that expenditure should have been included in the return of election expenses. The evidence of the 1st respondent is that he had no intention of standing as a candidate unless the Congress was prepared to nominate him. In those circumstances it was only when the Congress nominated him as its nominee that he should be said to have decided to stand as a candidate. No authority has been placed to show that any expenditure incurred prior to such a decision on the part of the candidate should be considered as election expense.

146. It may be noticed in this connection that none of these things *viz.*, the alleged irregularity in the matter of the petrol receipt, the alleged non-maintainability of accounts and the non-inclusion of the expenditure for Delhi and Hubli trips have been alleged in the petition. There is nothing in the petition to show that on account of these facts the return of election expenses should be considered a false return. We have already indicated that the making of a false return of election expense is a corrupt practice within the meaning of Section 124 (4). Under Section 83 of the Representation of the People Act, the election petition should be accompanied by a list with full particulars of any corrupt or illegal practice which the petitioner alleges. It appears to us that the non-mention of these particulars in the election petition would disentitle the petitioner from raising these objections. We find these issues also against the petitioner.

147. *Issues 16 and 17.*—We find that the election is neither wholly void nor void so far as the 1st respondent is concerned and we find these issues against the petitioner.

148. *Issue 18.*—In view of our findings on the several issues it is unnecessary to consider this issue. We may however refer to the evidence of R.W. 2 that he has been instructing his workers not to resort to any evil practices in the electioneering campaign. We find that there is no proof that any of the alleged corrupt or illegal practices were committed with the sanction or connivance of the 1st respondent.

149. *Issue 19.*—The 1st respondent would be entitled to his costs from the petitioner and the petitioner and respondents 2 and 3 would have to bear their own costs.

150. *Issue 20.*—In the result the petition is dismissed with costs of the 1st respondent, and the petitioner and the other respondents bearing their own costs. Advocate's fee Rs. 1,000/-.

(Sd.) N. D. KRISHNA RAO, *Chairman.*

(Sd.) D. RANGAYYA, *Member.*

(Sd.) K. P. SARVOTHAMA RAO, *Member.*

NOTE.—Bill of costs will follow.

*Witnesses examined on behalf of Petitioner*

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| 1. H. M. Veerabhadriah.                        | 35. Rudrappa.                                     |
| 2. Kadabageri Chennabasappa.                   | 36. Basetti (Eligara) Sankrappa.                  |
| 3. Madivalara Chennabasappa.                   | 37. Hubli Kotrappa.                               |
| 4. Belur Siddappa (Nilagunda).                 | 38. Kuruvatti <i>alias</i> Harapanahalli Nagappa. |
| 5. Kanchikeri Siddappa.                        | 39. Pakkecrappa.                                  |
| 6. Manegar Bharmappa.                          | 40. Talavara Hanumavva.                           |
| 7. Rachavvanavara Durugappa.                   | 41. T. Veerana Gowd.                              |
| 8. Chittappana Nagappa.                        | 42. K. Lingana Gowd.                              |
| 9. Murudapurada Virupakashappa.                | 43. Varada Amarappa.                              |
| 10. Halleuva.                                  | 44. K. Nagappa.                                   |
| 11. Siddana Gowd.                              | 45. Balada Siddappa.                              |
| 12. Parameswara Gowd.                          | 46. H. M. Malliah.                                |
| 13. B. Bharmappa.                              | 47. K. Santhana Gowd.                             |
| 14. Karnam Kotra Gowd.                         | 48. Yatada Sambhappa.                             |
| 15. Myagalageri Kuruvattappa.                  | 49. Doddamani Syed Sab.                           |
| 16. Patil Basavana Gowd.                       | 50. Patil Chenna Veerana Gowd.                    |
| 17. J. Dodda Siddalingappa.                    | 51. Kotriah (V. M.).                              |
| 18. T. Chennabasappa.                          | 52. H. Kotra Gowd.                                |
| 19. T. M. Ganga dhariah <i>alias</i> Gangappa. | 53. Aidanayya.                                    |
| 20. Ambli Sanna Bharamajja.                    | 54. Ittigi Thindappa.                             |
| 21. Yeligar Thorappa.                          | 55. Baramana Gowd.                                |
| 22. Setra Sivappa.                             | 56. Alavandi Gangavva.                            |
| 23. Nellagara Nanjundappa.                     | 57. Kadli Balu Basavva.                           |
| 24. A. B. R. Kotra Gowd ( <i>Petitioner</i> ). | 58. Sattavva.                                     |
| 25. G. Basavana Gowd.                          | 59. K. B. Seelavanthappa.                         |
| 26. Sanna Basavana Gowd.                       | 60. Baligar Basappa <i>alias</i> Basettappa.      |
| 27. A. Santhappa.                              | 61. Karegowdra Rudra Gowd.                        |
| 28. J. Sanna Kotra Gowd.                       | 62. H. M. Veeriah.                                |
| 29. B. Murigappa.                              | 63. Setra Sivalingappa.                           |
| 30. Matada Chennabasayya. Navaru.              | 64. Y. Mahabaleswarappa.                          |
| 31. Yettinahalli Huvanna.                      | 65. Natasappa.                                    |
| 32. K. E. Anjinappa.                           | 66. J. Venkapna.                                  |
| 33. S. Siddalingappa.                          | 67. T. M. Rajasekharayya.                         |
| 34. J. Sivalingappa.                           | 68. B. M. Eswarayya.                              |

*Witnesses examined on behalf of 1st Respondent.*

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|---|---|
| 1. S. Mallappa.                             | 21. Reddy Basalingana Gowd.                                   |
| 2. Ijari Sirasappa (R. 1).                  | 22. Vaddara Hanumappa <i>alias</i> Vaddara Dasappa Hanumappa. |
| 3. G. K. Chennakesava Iyyangar.             | 23. Barikara Dodda Pakkeerappa.                               |
| 4. T. R. Kuppuswamy.                        | 24. Satta Hanumappana Hanumappa.                              |
| 5. M. G. M. Moorthy.                        | 25. Chennahalli Hanumappa.                                    |
| 6. Sogi Rudrayya.                           | 26. Barmana Gowd.   |
| 7. Hotti Gonneppanavara Chowdappa.          | 27. Karnam Venkoba Rao.                                       |
| 8. M. Myalappa.                             | 28. A. S. Venugopal.  |
| 9. M. Dandappa.                             | 29. Kuruvatti Nagappa.  |
| 10. Marwadi Vanichand <i>alias</i> Vannaji. | 30. Kotrajja.   |
| 11. Basava Reddy.                           | 31. Karnam Bhujanga Rao.                                      |
| 12. Sethuramachar.                          | 32. P. Venkataraman.  |
| 13. Karnam Upendra Rao.                     | 33. Y. Satyanarayanamoorthy.                                  |
| 14. Chennana Gowd.                          | 34. S. Ramachandran.  |
| 15. H. M. Sivayogiah.                       | 35. S. N. Acharya (Satyanarayanacharya).                      |
| 16. Revana Gowd.                            | 36. I. Sundaresan.  |
| 17. Busi Hanumana Gowd.                     | 37. Mariswariah.  |
| 18. Kotra Basiah.                           | 38. Revana Siddiah.   |
| 19. Chowdavvanavara Mylappa.                | 39. Ijari Baramappa.  |
| 20. Driver Rangappa.                        |   |

*List of Exhibits filed on behalf of Petitioner*

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| A-1/5-1-52 . . . . .             | Application by petitioner for recount dated 5-1-52 to Returning Officer, Hospet.   |
| A-2/25-12-51 . . . . .           | Form No. 6 appointing N. P. Siddana Gowd, P. W. 11 as polling Agent of petitioner (A. B. R. K. Gowd).  |
| A-3/No date . . . . .            | List of voters disfranchised at Bachigondanahalli Polling Station, prepared by P.W. 42.  |
| A-4/8-1-52 . . . . .             | R. P. acknowledgment from Collector, Bellary, addressed to Ryot Sangha, Yedrammanahalli.   |
| A-5/3-1-52 . . . . .             | Do. Do. President, District Board, Bellary, to Ryot Sangha, Yedrammanahalli.   |
| A-6/7-1-52 . . . . .             | Postal receipt for having sent the petition to District Collector, Bellary, as regards disenfranchisement.   |
| A-7/7-1-52 . . . . .             | Do. Do. sent to President, District Board, Bellary, as regards disenfranchisement.   |
| A-8/23-12-51 . . . . .           | Form No. 6 (Polling agent) appointment form appointing P. W. 4 as polling agent of petitioner at Hampasagar polling station.   |
| A-9/23-10-52 . . . . .           | Letter of Assistant Collector R. C. 3842/52-H, dated 23-10-52, stating that no petition by petitioner said to have been presented to polling Officer at Hampasagar is received by Polling Officer and that no reference is made. |
| A-10/2-1-52 . . . . .            | Petitioner's copy of complaint petition presented to the Presiding Officer, Hampasagar.  |
| A-11/ . . . . .                  | Form No. 14 Ballot Paper account of petitioner (A. B. R. Kotra Gowd) (from Built up record).   |
| A-12/ . . . . .                  | Do. Do. R-1 (Ijari Sirasappa).   |
| A-13/2-1-52 . . . . .            | Form No. 10 Ballot paper account submitted by Presiding Officer, Kanchikeri P. S. (No. 60).  |
| 1-14/10-2-52 & 14-2-52 . . . . . | Form No. 26, Return of Election expenses of R. 1.  |

*List of Exhibits filed on behalf of 1st Respondent*

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| B-1/12-3-52 & 13-3-52 . . . . . | Petitioner's Return of Election expenses showing receipt of Rs. 4,000 on 20-11-51 by self.    |
| B-2/3-1-52 . . . . .            | Receipt for Rs. 2184-4-0 given in favour of R-1 in full settlement of his petrol oil account. |
| B-3/ . . . . .                  | Form No. 15 account of rejected ballot papers of petitioner, A. B. R. Kotra Gowd.             |
| B-4/ . . . . .                  | Do. Do. R-1, I. Sirasappa.  |
| B-5/2-1-52 . . . . .            | Form No. 10 Ballot paper account of P. S. No. 54 Chirastahalli.                               |

(Sd.) N. D. KRISHNA RAO, *Chairman.*

[No. 19/55/52-Elec. III.]

P. S. SUBRAMANIAN,  
*Officer on Special Duty.*

